

THE STATUTES OF THE REPUBLIC OF SINGAPORE

**COMPANIES ACT
(CHAPTER 50)**

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Companies Act

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An Act relating to companies.

[29th December 1967]

PART I

PRELIMINARY

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| 1. This Act may be cited as the Companies Act. | Short title. |
| 2. This Act is divided into Parts, Divisions and Sub-divisions as follows: | Division into Parts.
62/70. |
| Part I ... Preliminary sections 1-7. | |
| Part II ... Administration of Act sections 8-16. | |
| Part III ... Division 1—Incorporation sections 17-22. | |
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Notes:—The abbreviations used in the marginal references to other Acts are references to the following Acts as amended:

U.K.: U.K. 1948 c. 38.

Aust.: Victoria No. 6839/1961.

Part V Management and Administration sections 142–198	...	Division 1—Office and name sections 142–144. Division 2—Directors and officers sections 145–173. Division 3—Meetings and proceedings sections 174–189. Division 4—Register of members sections 190–196. Division 5—Annual return sections 197–198.
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Part XI	...	Division 1—Investment companies sections 355–364.
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Part XII	...	Division 1—Enforcement of Act sections 387–399.
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3.—(1) The written laws mentioned in the First Schedule to the extent to which they are therein expressed to be repealed or amended are hereby repealed or amended accordingly.

Repeals.
Aust. s. 4.

(2) Unless the contrary intention appears in this Act —

Transitory provisions.

(a) all persons, things and circumstances appointed or created under any of the repealed or amended written laws or existing or continuing under any of such written laws immediately before the commencement of this Act shall under and subject to this Act continue to have the same status operation and effect as they respectively would have had if such written laws had not been so repealed or amended; and

(b) in particular and without affecting the generality of paragraph (a), such repeal shall not disturb the

continuity of status, operation or effect of any Order in Council, order, rule, regulation, scale of fees, appointment, conveyance, mortgage, deed, agreement, resolution, direction, instrument, document, memorandum, articles, incorporation, nomination, affidavit, call, forfeiture, minute, assignment, register, registration, transfer, list, licence, certificate, security, notice, compromise, arrangement, right, priority, liability, duty, obligation, proceeding, matter or thing made, done, effected, given, issued, passed, taken, validated, entered into, executed, lodged, accrued, incurred, existing, pending or acquired under any of such written laws before the commencement of this Act.

(3) Nothing in this Act shall affect the Table in any repealed written law corresponding to Table A in the Fourth Schedule or any part thereof (either as originally enacted or as altered in pursuance of any statutory power) or the corresponding Table in any former written law relating to companies (either as originally enacted or as so altered) so far as the same applies to any company existing at the commencement of this Act.

(4) The provisions of this Act with respect to winding up other than the provisions of Subdivision (5) of Division 4 of Part X shall not apply to any company or society of which the winding up has commenced before the commencement of this Act, but every such company or society shall be wound up in the same manner and with the same incidents as if this Act had not been passed and for the purposes of the winding up the written laws under which the winding up commenced shall be deemed to remain in full force.

Interpreta-
tion.
U.K. ss. 154,
455.
Aust. s. 5.
62/70
10/74
15/84.

4.—(1) In this Act, unless the contrary intention appears —

“accounting records”, in relation to a corporation, includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts of the corporation are made up;

“accounts” means profit and loss accounts and balance-sheets and includes notes (other than auditors’ reports or directors’ reports) attached or intended

to be read with any of those profit and loss accounts or balance-sheets;

“annual general meeting”, in relation to a company, means a meeting of the company required to be held by section 175;

“annual return” means —

(a) in relation to a company having a share capital, the return required to be made by section 197 (1); and

(b) in relation to a company not having a share capital, the return required to be made by section 197 (5),

and includes any document accompanying the return;

“approved company auditor” means a person approved as such by the Minister under section 9 whose approval has not been revoked and in relation to a corporation, not being a company, includes a person qualified to act as auditor of the corporation under the law of the place in which the corporation is incorporated;

“approved liquidator” means an approved company auditor who has been approved by the Minister under section 9 as a liquidator and whose approval has not been revoked;

“articles” means articles of association;

“banking corporation” means a licensed bank under any written law relating to banking;

“books” includes any account, deed, writing or document and any other record of information however compiled, recorded or stored whether in written or printed form or microfilm by electronic process or otherwise;

“borrowing corporation” means a corporation that is or will be under a liability (whether or not such liability is present or future) to repay any money received or to be received by it in response to an invitation to the public to subscribe for or purchase debentures of the corporation;

“branch register” means —

(a) in relation to a company —

(i) a branch register of members of the company kept in pursuance of section 196; or

(ii) a branch register of holders of debentures kept in pursuance of section 93,

as the case may require; and

(b) in relation to a foreign company, a branch register of members of the company kept in pursuance of section 379;

“certified”, in relation to a copy of a document, means certified in the prescribed manner to be a true copy of the document and, in relation to a translation of a document, means certified in the prescribed manner to be a correct translation of the document into the English language;

“charge” includes a mortgage and any agreement to give or execute a charge or mortgage whether upon demand or otherwise;

“company” means a company incorporated pursuant to this Act or pursuant to any corresponding previous written law;

“company having a share capital” includes an unlimited company with a share capital;

“company limited by guarantee” means a company formed on the principle of having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up;

“company limited by shares” means a company formed on the principle of having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them;

“contributory”, in relation to a company, means a person liable to contribute to the assets of the company in the event of its being wound up, and includes the holder of fully paid shares in the

company and, prior to the final determination of the persons who are contributories, includes any person alleged to be a contributory;

“corporation” means any body corporate formed or incorporated or existing in Singapore or outside Singapore and includes any foreign company but does not include —

- (a) any body corporate that is incorporated in Singapore and is by notification of the Minister in the *Gazette* declared to be a public authority or an instrumentality or agency of the Government or to be a body corporate which is not incorporated for commercial purposes;
- (b) any corporation sole;
- (c) any co-operative society; or
- (d) any registered trade union;

“Court” means the High Court or a judge thereof;

“corresponding previous written law” means any written law relating to companies which has been at any time in force in Singapore and which corresponds with any provision in this Act;

“creditors’ voluntary winding up” means a winding up under Division 3 of Part X, other than a members’ voluntary winding up;

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

“default penalty” means a default penalty within the meaning of section 408;

“director” includes any person occupying the position of director of a corporation by whatever name called and includes a person in accordance with whose directions or instructions the directors of a corporation are accustomed to act and an alternate or substitute director;

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

“emoluments”, in relation to a director or auditor of a company, includes any fees, percentages and other

payments made (including the money value of any allowances or perquisites) or consideration given, directly or indirectly, to the director or auditor by that company or by a holding company or a subsidiary of that company, whether made or given to him in his capacity as a director or auditor or otherwise in connection with the affairs of that company or of the holding company or the subsidiary;

“equity share” means any share which is not a preference share;

“exempt private company” means a private company in the shares of which no beneficial interest is held directly or indirectly by any corporation and which has not more than 20 members;

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

“filed” means filed under this Act or any corresponding previous written law;

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

“foreign company” means —

(a) a company, corporation, society, association or other body incorporated outside Singapore; or

(b) an unincorporated society, association or other body which under the law of its place of origin may sue or be sued, or hold property in the name of the secretary or other officer of the body or association duly appointed for that purpose and which does not have its head office or principal place of business in Singapore;

“guarantor corporation”, in relation to a borrowing corporation, means a corporation that has guaranteed or has agreed to guarantee the repayment of any money received or to be received by the

borrowing corporation in response to an invitation to the public to subscribe for or purchase debentures of the borrowing corporation;

“liquidator” includes the Official Receiver when acting as the liquidator of a corporation;

“limited company” means a company limited by shares or by guarantee or, prior to the expiry of the period of two years as specified in section 17 (6), a company limited both by shares and guarantee;

“lodged” means lodged under this Act or any corresponding previous written law;

“manager”, in relation to a company, means the principal executive officer of the company for the time being by whatever name called and whether or not he is a director;

“marketable securities” means debentures, funds, stocks, shares or bonds of any government or of any local authority or of any corporation or society and includes any right or option in respect of shares in any corporation and any interest as defined in section 107;

“members’ voluntary winding up” means a winding up under Division 3 of Part X, where a declaration has been made and lodged in pursuance of section 293;

“memorandum” means memorandum of association;

“minimum subscription”, in relation to any shares offered to the public for subscription, means the amount stated in the prospectus relating to the offer in pursuance of paragraph 4 (a) of the Fifth Schedule as the minimum amount which in the opinion of the directors must be raised by the issue of the shares so offered;

“office copy”, in relation to any Court order or other Court document, means a copy authenticated under the hand or seal of the Registrar or other proper officer of the Court;

“officer”, in relation to a corporation, includes —

(a) any director, secretary or employee of the corporation;

(b) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; and

(c) any liquidator of a company appointed in a voluntary winding up,

but does not include —

(d) any receiver who is not also a manager;

(e) any receiver and manager appointed by the Court; or

(f) any liquidator appointed by the Court or by the creditors;

Cap. 18.

“Official Receiver” means the Official Assignee appointed under the Bankruptcy Act and includes the deputy of any such Official Assignee and any person appointed as Assistant Official Assignee;

“preference share” means a share by whatever name called, which does not entitle the holder thereof to the right to vote at a general meeting or to any right to participate beyond a specified amount in any distribution whether by way of dividend, or on redemption, in a winding up, or otherwise;

“prescribed” means prescribed under this Act or by the rules;

“principal register”, in relation to a company, means the register of members of the company kept in pursuance of section 190;

“printed” includes typewritten or lithographed or reproduced by any mechanical means;

“private company” means —

(a) any company which immediately prior to the commencement of this Act was a private company under the provisions of the repealed written laws;

(b) any company incorporated as a private company by virtue of section 18; or

(c) any company converted into a private company pursuant to section 31 (1),

being a company which has not ceased to be a private company under section 31 or 32;

- “profit and loss account” includes income and expenditure account, revenue account or any other account showing the results of the business of a corporation for a period;
- “promoter”, in relation to a prospectus issued by or in connection with a corporation, means a promoter of the corporation who was a party to the preparation of the prospectus or of any relevant portion thereof, but does not include any person by reason only of his acting in a professional capacity;
- “prospectus” means any prospectus, notice, circular, advertisement or invitation inviting applications or offers from the public to subscribe for or purchase or offering to the public for subscription or purchase any shares in or debentures of or any units of shares in or units of debentures of a corporation or proposed corporation;
- “public company” means a company other than a private company;
- “registered” means registered under this Act or any corresponding previous enactment;
- “Registrar” means the Registrar of Companies appointed under this Act and includes any Deputy or Assistant Registrar of Companies;
- “regulations” means regulations made under this Act;
- “related corporation”, in relation to a corporation, means a corporation that is deemed to be related to the first-mentioned corporation by virtue of section 6;
- “repealed written laws” means the written laws repealed by this Act;
- “resolution for voluntary winding up” means the resolution referred to in section 290;
- “Rules” means Rules of Court;
- “share” means share in the share capital of a corporation and includes stock except where a distinction between stock and shares is expressed or implied;
- “solicitor” means an advocate and solicitor of the Supreme Court;
- “statutory meeting” means the meeting referred to in section 174;

“statutory report” means the report referred to in section 174;

“Table A” means Table A in the Fourth Schedule;

“this Act” includes any regulations;

“trustee corporation” means a corporation that is a public company under this Act or under the law of any prescribed country which has been declared by the Minister to be a trustee corporation for the purposes of this Act;

“unit”, in relation to a share, debenture or other interest, means any right or interest therein, by whatever term called;

“unlimited company” means a company formed on the principle of having no limit placed on the liability of its members;

“voting share”, in relation to a body corporate, means an issued share in the body corporate, not being —

(a) a share to which, in no circumstances, is there attached a right to vote; or

(b) a share to which there is attached a right to vote only in one or more of the following circumstances:

(i) during a period in which a dividend (or part of a dividend) in respect of the share is in arrear;

(ii) upon a proposal to reduce the share capital of the body corporate;

(iii) upon a proposal that affects rights attached to the share;

(iv) upon a proposal to wind up the body corporate;

(v) upon a proposal for the disposal of the whole of the property, business and undertakings of the body corporate;

(vi) during the winding up of the body corporate.

Directors.

(2) For the purposes of this Act, a person shall not be regarded as a person in accordance with whose directions or

instructions the directors of a company are accustomed to act by reason only that the directors act on advice given by him in a professional capacity.

(3) For the purposes of this Act, a statement included in a prospectus or statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included. When statement untrue.

(4) For the purposes of this Act, a statement shall be deemed to be included in a prospectus or statement in lieu of prospectus if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith. When statement included in prospectus.

(5) For the purposes of this Act, any invitation to the public to deposit money with or to lend money to a corporation shall be deemed to be an invitation to subscribe for or purchase debentures of the corporation and any document that is issued or intended or required to be issued by a corporation acknowledging or evidencing or constituting an acknowledgment of the indebtedness of the corporation in respect of any money that is or may be deposited with or lent to the corporation in response to such an invitation shall be deemed to be a debenture, but an invitation to the public by a prescribed corporation as defined in section 44 (7) shall not be deemed to be an invitation to the public to deposit money with or to lend money to the corporation for the purpose of Division 4 of Part IV. Invitation to lend money deemed invitation to purchase debentures.

(6) Any reference in this Act to offering shares or debentures to the public shall, unless the contrary intention appears, be construed as including a reference to offering them to any section of the public, whether selected as clients of the person issuing the prospectus or in any other manner; but a bona fide offer or invitation with respect to shares or debentures shall be deemed not to be an offer to the public if it is — As to what constitutes an offer to the public. 15/84.

- (a) an offer or invitation to enter into an underwriting agreement;
- (b) made to a person whose ordinary business it is to buy or sell shares or debentures whether as principal or agent;
- (c) made to existing members or debenture holders of a corporation and relates to shares in or

debentures of that corporation and is not an offer to which section 47 applies; or

- (d) made to existing members of a company within the meaning of section 306 and relates to shares in the corporation within the meaning of that section.

(7) Unless the contrary intention appears any reference in this Act to a person being or becoming bankrupt or to a person assigning his estate for the benefit of his creditors or making an arrangement with his creditors under any written law relating to bankruptcy or to a person being an undischarged bankrupt or to any status, condition, act, matter or thing under or in relation to the law of bankruptcy shall be construed as including a reference to a person being or becoming bankrupt or insolvent or to a person making any such assignment or arrangement or to a person being an undischarged bankrupt or insolvent or to the corresponding status, condition, act, matter or thing (as the case requires) under any written law relating to bankruptcy or insolvency.

Definition of subsidiary and holding company.
U.K. s. 154.
Aust. s. 6.

5.—(1) For the purposes of this Act, a corporation shall, subject to subsection (3), be deemed to be a subsidiary of another corporation, if —

- (a) that other corporation —
- (i) controls the composition of the board of directors of the first-mentioned corporation;
 - (ii) controls more than half of the voting power of the first-mentioned corporation; or
 - (iii) holds more than half of the issued share capital of the first-mentioned corporation (excluding any part thereof which consists of preference shares); or
- (b) the first-mentioned corporation is a subsidiary of any corporation which is that other corporation's subsidiary.

(2) For the purposes of subsection (1), the composition of a corporation's board of directors shall be deemed to be controlled by another corporation if that other corporation by the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or

remove all or a majority of the directors, and for the purposes of this provision that other corporation shall be deemed to have power to make such an appointment if —

- (a) a person cannot be appointed as a director without the exercise in his favour by that other corporation of such a power; or
- (b) a person's appointment as a director follows necessarily from his being a director or other officer of that other corporation.

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

- (a) any shares held or power exercisable by that other corporation in a fiduciary capacity shall be treated as not held or exercisable by it;
- (b) subject to paragraphs (c) and (d), any shares held or power exercisable —
 - (i) by any person as a nominee for that other corporation (except where that other corporation is concerned only in a fiduciary capacity); or
 - (ii) by, or by a nominee for, a subsidiary of that other corporation, not being a subsidiary which is concerned only in a fiduciary capacity,
shall be treated as held or exercisable by that other corporation;
- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned corporation or of a trust deed for securing any issue of such debentures shall be disregarded; and
- (d) any shares held or power exercisable by, or by a nominee for, that other corporation or its subsidiary (not being held or exercisable as mentioned in paragraph (c)) shall be treated as not held or exercisable by that other corporation if the ordinary business of that other corporation or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(4) A reference in this Act to the holding company of a company or other corporation shall be read as a reference to a corporation of which that last-mentioned company or corporation is a subsidiary.

When corporations deemed to be related to each other.
Aust. s. 6 (5).

6. Where a corporation —

- (a) is the holding company of another corporation;
- (b) is a subsidiary of another corporation; or
- (c) is a subsidiary of the holding company of another corporation,

that first-mentioned corporation and that other corporation shall for the purposes of this Act be deemed to be related to each other.

Interests in shares.
62/70
49/73
10/74.

7.—(1) The following subsections have effect for the purposes of Division 4 of Part IV and sections 163, 164 and 165.

(2) Where the property subject to a trust consists of or includes shares and a person knows or has reasonable grounds for believing that he has an interest under the trust and the property subject to the trust consists of or includes those shares, he shall be deemed to have an interest in those shares.

62/70.

(3) Where a right (being a right or an interest described in the definition of “interest” in section 107) —

- (a) was issued or offered to the public for subscription or purchase, or where the public was invited to subscribe for or purchase such a right, and the right was so subscribed for or purchased; or
- (b) was issued for the purpose of an offer to the public by and is held by the management company within the meaning of that section,

that right does not constitute an interest in a share.

62/70.

(4) Where a body corporate has an interest in a share and —

- (a) the body corporate is, or its directors are, accustomed or is under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of a person;
- (b) a person has a controlling interest in the body corporate; or

- (c) a person is, the associates of a person are, or a person and his associates are, entitled to exercise or control the exercise of not less than 15% of the votes attached to the voting shares in the body corporate,

that person shall be deemed to have an interest in that share.

(5) For the purposes of subsection (4) (c), a person is an associate of another person if the first-mentioned person is — 62/70.

- (a) a corporation that, by virtue of section 6, is deemed to be related to that other person;
 - (b) a person in accordance with whose directions, instructions or wishes that other person is accustomed or is under an obligation whether formal or informal to act in relation to the share referred to in subsection (4);
 - (c) a person who is accustomed or is under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of that other person in relation to that share;
 - (d) a body corporate that is, or the directors of which are, accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of that other person in relation to that share; or
 - (e) a body corporate in accordance with the directions, instructions or wishes of which, or of the directors of which, that other person is under an obligation whether formal or informal to act in relation to that share.
- (6) Where a person — 62/70.
- (a) has entered into a contract to purchase a share;
 - (b) has a right, otherwise than by reason of having an interest under a trust, to have a share transferred to himself or to his order, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not;
 - (c) has the right to acquire a share, or an interest in a share, under an option, whether the right is exercisable presently or in the future and

whether on the fulfilment of a condition or not;
or

- (d) is entitled (otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of a corporation or of a class of its members) to exercise or control the exercise of a right attached to a share, not being a share of which he is the registered holder,

that person shall be deemed to have an interest in that share.

62/70. (7) A person shall not be deemed not to have an interest in a share by reason only that he has the interest in the share jointly with another person.

62/70. (8) It is immaterial, for the purposes of determining whether a person has an interest in a share, that the interest cannot be related to a particular share.

62/70. (9) There shall be disregarded —

(a) an interest in a share if the interest is that of a person who holds the share as bare trustee;

(b) an interest in a share of a person whose ordinary business includes the lending of money if he holds the interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money;

(c) an interest of a person in a share, being an interest held by him by reason of his holding a prescribed office; and

(d) a prescribed interest in a share, being an interest of such person, or of the persons included in such class of persons, as is prescribed.

62/70. (10) An interest in a share shall not be disregarded by reason only of —

(a) its remoteness;

(b) the manner in which it arose; or

(c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction. [6A

PART II

ADMINISTRATION OF ACT

8.—(1) The Minister may appoint a Registrar of Companies and such Deputy Registrars, Assistant Registrars, clerks and servants as he thinks necessary for the proper administration of this Act and may remove any persons so appointed.

Registrar of
Companies,
etc.
Aust. s. 7.

(2) Subject to the general direction and control of the Registrar and to such restrictions and limitations as may be prescribed, anything by this Act appointed or authorised or required to be done or signed by the Registrar may be done or signed by any such Deputy or Assistant Registrar and shall be as valid and effectual as if done or signed by the Registrar.

(3) No person dealing with any Deputy or Assistant Registrar shall be concerned to see or inquire whether any restrictions or limitations have been prescribed, and every act or omission of a Deputy or Assistant Registrar so far as it affects any such person shall be as valid and effectual as if done or omitted by the Registrar.

(4) All courts, judges and persons acting judicially shall take judicial notice of the seal and signature of the Registrar and of any Deputy or Assistant Registrar.

Certain
signatures to
be judicially
noticed.

(5) For the purpose of ascertaining whether a corporation or any officer of a corporation is complying with the provisions of this Act, the Registrar or any person authorised by the Minister may inspect any books, minute book, register or document required by this Act to be kept by the corporation.

(6) No person shall make an inspection in pursuance of subsection (5) unless he has made a declaration in the prescribed form and no person shall be authorised by the Minister to make any such inspection unless the Minister is satisfied that the person has an adequate knowledge of accounting principles and practice and of the provisions of this Act to enable him to make a proper inspection.

(7) A person —

15/84.

(a) who makes an inspection in pursuance of subsection (5) before he has made a declaration referred to in subsection (6); or

- (b) who after making such a declaration makes, except for the purposes of this Act, or in the course of any criminal proceedings, a record of, or divulges or communicates to any other person any information which he has acquired by reason of such an inspection,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000.

- 15/84. (8) A corporation or any officer shall on being required by the Registrar or person so authorised produce any such book, register or document and if any corporation or officer fails to do so he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000.

- 15/84. (9) Where a corporation or any officer produces a book, register or document pursuant to subsection (8), the Registrar or a person so authorised may —

- (a) take possession of such book, register or document and may make copies thereof or take extracts therefrom; or
- (b) retain possession of such book, register or document for such period as is necessary to inspect the same or to make copies thereof or take extracts therefrom.

- 15/84. (10) A corporation or any officer who obstructs or hinders the Registrar or person so authorised while exercising any of the powers referred to in subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000.

(11) Subsection (5) shall not be construed as limiting or affecting any power to make any such inspection conferred on any person by any other written law.

- Fees. (12) There shall be paid to the Registrar —
- (a) the fees specified in the Second Schedule; and
- (b) such other fees as are prescribed.

- 15/84. (13) The Minister may by notification in the *Gazette* add to, vary or amend the fees specified in the Second Schedule.

9.—(1) Any person may apply to the Minister to be approved as a company auditor for the purposes of this Act. Company auditors and liquidators to be approved by Minister. Aust. s. 8.

(2) The Minister may, if he is satisfied that the applicant is of good character and competent to perform the duties of an auditor under this Act, upon payment of the fee set out in the Second Schedule approve such person as a company auditor for the purposes of this Act.

(3) Any approved company auditor may apply to the Minister to be approved as a liquidator for the purposes of this Act, and the Minister, if satisfied as to the experience and capacity of the applicant, may on payment of the fee set out in the Second Schedule, approve such person as a liquidator for the purposes of this Act.

(4) Any approval granted by the Minister pursuant to this section may be made subject to such limitations or conditions as he thinks fit and may be revoked at any time by him by the service of a notice of revocation on the approved person.

(5) Every approval under this section including a renewal of approval of a company auditor or liquidator shall be in force until 31st March in the third year following the year in which the approval was granted unless sooner revoked by the Minister.

(6) The Minister may delegate all or any of his powers under this section to any person or body of persons charged with the responsibility for the registration or control of accountants in Singapore.

(7) Any person who is dissatisfied with the decision of any person or body of persons to whom the Minister has delegated all or any of his powers under this section may appeal to the Minister who may in his discretion confirm, reverse or vary such decision. [8

10.—(1) A person shall not knowingly consent to be appointed, and shall not knowingly act, as auditor for any company and shall not prepare, for or on behalf of a company, any report required by this Act to be prepared by an approved company auditor — Company auditors. Aust. s. 9.

(a) if he is not an approved company auditor;

(b) if he is indebted to the company or to a corporation that is deemed to be related to that company by

virtue of section 6 in an amount exceeding \$2,500;

(c) if he is —

(i) an officer of the company;

(ii) a partner, employer or employee of an officer of the company; or

(iii) a partner or employee of an employee of an officer of the company; or

(d) if he is responsible for or if he is the partner, employer or employee of a person responsible for the keeping of the register of members or the register of holders of debentures of the company.

15/84.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000.

(3) For the purposes of subsection (1), a person shall be deemed to be an officer of a company if he is an officer of a corporation that is deemed to be related to the company by virtue of section 6 or except where the Minister, if he thinks, fit in the circumstances of the case, directs otherwise, if he has, at any time within the preceding period of 12 months, been an officer or promoter of the company or of such a corporation.

(4) For the purposes of this section, a person shall not be deemed to be an officer by reason only of his having been appointed as auditor of a corporation.

15/84.

(5) A firm shall not knowingly consent to be appointed, and shall not knowingly act, as auditor for any company and shall not prepare, for or on behalf of a company, any report required by this Act to be prepared by an approved company auditor unless —

(a) all the partners of the firm resident in Singapore are approved company auditors and have lodged a return with the Registrar showing the full names and addresses of all the partners of the firm within one month from the beginning of a calendar year or, if there is a change of partners or their addresses during a calendar year, within one month of the date that the change occurs and, where the firm is not registered as a firm

under any law for the time being in force, a return showing the full names and addresses of all the partners of the firm has been lodged with the Registrar; and

- (b) no partner is disqualified under subsection (1) (b), (c) or (d) from acting as the auditor of the company.

(6) If a firm contravenes subsection (5) each partner of the firm shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000. 15/84.

(7) No company or person shall appoint a person as auditor of a company unless that last-mentioned person has prior to such appointment consented in writing to act as such auditor, and no company or person shall appoint a firm as auditor of a company unless the firm has prior to such appointment consented, in writing under the hand of at least one partner of the firm, to act as such auditor.

(8) The appointment of a firm in the name of the firm as auditors of a company shall take effect and operate as an appointment as auditors of the company of the persons who are members of that firm at the time of the appointment.

[9

11.—(1) Subject to this section, a person shall not, except with the leave of the Court, consent to be appointed, and shall not act as liquidator of a company — Disqualifica-
tion of
liquidators.
Aust. s. 10.

- (a) if he is not an approved liquidator;
- (b) if he is indebted to the company or to a corporation that is deemed to be related to the company by virtue of section 6 in an amount exceeding \$2,500;
- (c) if he is —
- (i) an officer of the company;
 - (ii) a partner, employer or employee of an officer of the company; or
 - (iii) a partner or employee of an employee of an officer of the company;
- (d) if he is an undischarged bankrupt;

- (e) if he has assigned his estate for the benefit of his creditors or has made an arrangement with his creditors pursuant to any law relating to bankruptcy; or
- (f) if he has been convicted of an offence involving fraud or dishonesty punishable on conviction by imprisonment for 3 months or more.

(2) Subsection (1) (a) and (c) shall not apply —

- (a) to a members' voluntary winding up; or
- (b) to a creditors' voluntary winding up, if by a resolution carried by a majority of the creditors in number and value present in person or by proxy and voting at a meeting of which 7 days' notice has been given to every creditor stating the object of the meeting, it is determined that that paragraph shall not so apply.

(3) For the purposes of subsection (1), a person shall be deemed to be an officer of a company if he is an officer of a corporation that is deemed to be related to the company by virtue of section 6 or has, at any time within the preceding period of 24 months, been an officer or promoter of the company or of such a corporation.

(4) A person shall not be appointed as liquidator of a company unless he has prior to such appointment consented in writing to act as such liquidator.

(5) Nothing in this section shall affect any appointment of a liquidator made before the commencement of this Act.

15/84.

(6) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000. [10

Registers.
Aust. s. 12.

12.—(1) The Registrar shall, subject to this Act, keep such registers as he considers necessary in such form as he thinks fit.

Inspection of
register.
15/84.

(2) Any person may, on payment of the prescribed fee —

- (a) inspect any document, or if there is a microfilm of any such document, that microfilm, filed or lodged with the Registrar; or
- (b) require a certificate of the incorporation of any company or any other certificate issued under

this Act or a copy of or extract from any document kept by the Registrar to be given or certified by the Registrar.

(3) A copy of or extract from any document, including a copy produced by way of microfilm, filed or lodged at the office of the Registrar certified to be a true copy or extract under the hand and seal of the Registrar shall in any proceedings be admissible in evidence as of equal validity with the original document.

Evidentiary value of copies certified by Registrar. 15/84.

(4) In any legal proceedings a certificate under the hand and seal of the Registrar that a requirement of this Act specified in the certificate —

Evidence of statutory requirements.

(a) had or had not been complied with at a date or within a period specified in the certificate; or

(b) had been complied with upon a date specified in the certificate but not before that date,

shall be received as prima facie evidence of the matters specified in the certificate.

(5) If the Registrar is of the opinion that any document submitted to him —

Registrar may refuse to register or receive document.

(a) contains matter contrary to law;

(b) by reason of any omission or misdescription has not been duly completed;

(c) does not comply with the requirements of this Act; or

(d) contains any error, alteration or erasure,

he may refuse to register or receive the document and request that the document be appropriately amended or completed and resubmitted or that a fresh document be submitted in its place.

(6) Any person aggrieved by the refusal of the Registrar to register any corporation or to register or receive any document or by any other act or decision of the Registrar may appeal to the Court which may confirm the refusal, act or decision or give such directions in the matter as seem proper or otherwise determine the matter but this subsection shall not apply to any act or decision of the Registrar —

Appeal.

(a) in respect of which any provision in the nature of an appeal or review is expressly provided in this Act; or

- (b) which is declared by this Act to be conclusive or final or is embodied in any document declared by this Act to be conclusive evidence of any act, matter or thing.

Destruction,
etc., of old
records.
15/84.

(7) The Registrar may, if in his opinion it is no longer necessary or desirable to retain them, destroy or give to the National Archives and Records Centre —

- (a) in the case of a corporation, any document (other than the memorandum and articles of association) which has been microfilmed; or
- (b) in the case of a corporation that has been dissolved, struck off the register or ceased to be on the register, any document which has been microfilmed. [11

Enforcement
of duty
to make
returns.
Aust. s. 12
(8) to (10).

13.—(1) If a corporation or person, having made default in complying with —

- (a) any provision of this Act or of any other law which requires the lodging or filing in any manner with the Registrar or the Official Receiver of any return, account or other document or the giving of notice to him of any matter; or
- (b) any request of the Registrar or the Official Receiver to amend or complete and resubmit any document or to submit a fresh document,

fails to make good the default within 14 days after the service on the corporation or person of a notice requiring it to be done, the Court may, on an application by any member or creditor of the corporation or by the Registrar or the Official Receiver, make an order directing the corporation and any officer thereof or such person to make good the default within such time as is specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the corporation or by any officer of the corporation responsible for the default or by such person.

(3) Nothing in this section shall limit the operation of any written law imposing penalties on a corporation or its officers or such person in respect of any such default. [12

14.—(1) If in the case of any corporation incorporated or registered under this Act or any corresponding previous written law the memorandum or articles or any other document relating to the corporation filed or lodged with the Registrar has been lost or destroyed, the corporation may apply to the Registrar for leave to lodge a copy of the document as originally filed or lodged.

Relodging of lost registered documents.
Aust. s. 13.

(2) On such application being made the Registrar may direct notice thereof to be given to such persons and in such manner as he thinks fit.

(3) The Registrar upon being satisfied —

- (a) that the original document has been lost or destroyed;
- (b) of the date of the filing or lodging thereof with the Registrar; and
- (c) that a copy of such document produced to the Registrar is a correct copy,

may certify upon that copy that he is so satisfied and direct that that copy be lodged in the manner required by law in respect of the original.

(4) Upon the lodgment that copy for all purposes shall, from such date as is mentioned in the certificate as the date of the filing or lodging of the original with the Registrar, have the same force and effect as the original.

(5) The Court may, by order upon application by any person aggrieved and after notice to any other person whom the Court directs, confirm, vary or rescind the certificate and the order may be lodged with the Registrar and shall be registered by him, but no payments, contracts, dealings, acts and things made, had or done in good faith before the registration of such order and upon the faith of and in reliance upon the certificate shall be invalidated or affected by such variation or rescission.

(6) No fee shall be payable upon the lodging of a document under this section. [13

15.—(1) For purposes of securing that the documents delivered to the Registrar under the provisions of this Act are of a standard size, durable and easily legible, the Minister may by regulations prescribe such requirements (whether as to size, weight, quality or colour of paper, size,

Size, durability and legibility of documents delivered to Registrar.
15/84.

type or colour of lettering, or otherwise) as he may consider appropriate; and different requirements may be so prescribed for different documents or classes of documents.

(2) If under any such provision there is delivered to the Registrar a document (whether an original document or a copy) which in the opinion of the Registrar does not comply with such requirements prescribed under this section as are applicable to it, the Registrar may serve on any person by whom under that provision the document was required to be delivered (or, if there are two or more such persons, may serve on any of them) a notice stating his opinion to that effect and indicating the requirements so prescribed with which in his opinion the document does not comply.

(3) Where the Registrar serves a notice under subsection (2) with respect to a document delivered under any such provision, then, for the purposes of any written law which enables a penalty to be imposed in respect of any omission to deliver to the Registrar a document required to be delivered under that provision (and, in particular, for the purposes of any such law whereby such a penalty may be imposed by reference to each day during which the omission continues) —

(a) any duty imposed by that provision to deliver such a document to the Registrar shall be treated as not having been discharged by the delivery of that document; but

(b) no account shall be taken of any days falling within the period mentioned in subsection (4).

(4) The period referred to in subsection (3) (b) is the period beginning on the day on which the document was delivered to the Registrar as mentioned in subsection (2) and ending on the fourteenth day after the date of service of the notice under subsection (2) by virtue of which subsection (3) applies.

(5) In this section, any reference to delivering a document shall be construed as including a reference to sending, forwarding, producing or (in the case of a notice) giving it.

16. Where the Registry of Companies provides a service (to be called an Instant Information Service) to the public whereby computerised information of prescribed particulars of a company registered under this Act is supplied to the public on payment of a prescribed fee, neither the Government nor any of its employees in the Registry of Companies involved in the supply of such information shall be liable for any loss or damage suffered by members of the public by reason of any errors or omissions of whatever nature appearing therein or however caused if made in good faith and in the ordinary course of the discharge of the duties of such employees. [13B

Instant Information Service — exclusion of liability for errors or omissions. 15/84.

PART III

CONSTITUTION OF COMPANIES

Division 1 — Incorporation

17.—(1) Subject to this Act, any two or more persons associated for any lawful purpose may by subscribing their names to a memorandum and complying with the requirements as to registration form an incorporated company.

Formation of companies. Aust. s. 14.

(2) A company may be —

15/84.

- (a) a company limited by shares;
- (b) a company limited by guarantee; or
- (c) an unlimited company.

(3) No company, association or partnership consisting of more than 20 persons shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other written law in Singapore or letters patent.

(4) So much of subsection (3) as prohibits the formation of an association or a partnership consisting of more than 20 persons shall not apply to an association or a partnership formed for the purpose of carrying on any profession or calling which under the provisions of any written law may be exercised only by persons who possess the qualifications laid down in such written law for the purpose of carrying on that profession or calling.

15/84.

15/84. (5) As from 15th August 1984 no company limited by guarantee with a share capital shall be registered under this Act.

15/84. (6) The prohibition referred to in subsection (5) shall not affect a company limited by guarantee which has a share capital and is registered as such before 15th August 1984 and section 38 (2) shall continue to apply to a company so registered; but any such company shall, within two years of that date, elect to convert and re-register that company either as a company limited by shares or as a company limited by guarantee.

15/84. (7) The conversion of a company referred to in subsection (6) shall be effected by lodging with the Registrar a special resolution determining the conversion of the company from a company limited by guarantee with a share capital to a company limited by shares or to a company limited by guarantee, as the case may be, and altering its memorandum and articles of association to the extent that is necessary to bring them into conformity with the requirements of this Act relating to the memorandum and articles of a company limited by shares or of a company limited by guarantee, as the case may be.

15/84. (8) On compliance by a company with subsection (7) and on the issue by the Registrar of a certificate of incorporation of the company in accordance with the special resolution, the company shall be a company limited by shares or a company limited by guarantee, as the case may be. [14

Private
company.
U.K. s. 28.
Aust. s. 15.

18.—(1) A company having a share capital may be incorporated as a private company if its memorandum or articles —

- (a) restricts the right to transfer its shares;
- (b) limits to not more than 50 the number of its members (counting joint holders of shares as one person and not counting any person in the employment of the company or of its subsidiary or any person who while previously in the employment of the company or of its subsidiary was and thereafter has continued to be a member of the company);
- (c) prohibits any invitation to the public to subscribe for any shares in or debentures of the company; and

(d) prohibits any invitation to the public to deposit money with the company for fixed periods or payable at call, whether bearing or not bearing interest.

(2) Where, upon the commencement of this Act, neither the memorandum nor articles of a company that is a private company by virtue of paragraph (a) of the definition of “private company” in section 4 (1) contain the restrictions, limitations and prohibitions required by subsection (1) to be included in the memorandum or articles of a company that may be incorporated as a private company, the articles of the company shall be deemed to include each such restriction, limitation or prohibition that is not so included and a restriction on the right to transfer its shares that is so deemed to be included in its articles shall be deemed to be a restriction that prohibits the transfer of shares except to a person approved by the directors of the company.

(3) Where a restriction, limitation or prohibition deemed to be included in the articles of a company under subsection (2) is inconsistent with any provision already included in the memorandum or articles of the company, that restriction, limitation or prohibition shall, to the extent of the inconsistency, prevail.

(4) A private company may, by special resolution, alter any restriction on the right to transfer its shares included, or deemed to be included, in its memorandum or articles or any limitation on the number of its members included, or deemed to be included, in its memorandum or articles, but not so that the memorandum and articles of the company cease to include the limitation required by subsection (1) (b) to be included in the memorandum or articles of a company that may be incorporated as a private company. [15

19.—(1) Persons desiring the incorporation of a company shall lodge the memorandum and the articles, if any, of the proposed company with the Registrar together with the other documents required to be lodged under this Act, and the Registrar on payment of the appropriate fees shall, subject to this Act, register the company by registering the memorandum and articles, if any.

Registration and incorporation.
U.K. ss. 12–15, 26.
Aust. s. 16.

(2) The Registrar shall require a statutory declaration made by a solicitor or an accountant engaged in the formation of the company or by a person named in the

Statutory declarations.
15/84.

articles as a director or secretary of the company to be lodged stating that all or any of the requirements of this Act have been complied with, and the Registrar may accept such a declaration as sufficient evidence of compliance.

(3) The Registrar shall require a certificate from a notary public, a solicitor, an approved company auditor or a person with such other qualifications as may be prescribed for the purposes of this section as to the identity of the subscribers to the memorandum and of any persons named in the memorandum or articles as officers of the proposed company.

Certificate of
incorporation.
15/84.

(4) On the registration of the memorandum the Registrar shall certify under his hand and seal that the company is on and from the date specified in the certificate incorporated, and that the company is —

- (a) a company limited by shares;
- (b) a company limited by guarantee; or
- (c) an unlimited company,

as the case may be, and where applicable, that it is a private company.

Effect of
incorporation.

(5) On and from the date of incorporation specified in the certificate of incorporation but subject to this Act, the subscribers to the memorandum together with such other persons as may from time to time become members of the company shall be a body corporate by the name contained in the memorandum capable forthwith of exercising all the functions of an incorporated company and of suing and being sued and having perpetual succession and a common seal with power to hold land but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is provided by this Act.

Members of
company.

(6) The subscribers to the memorandum shall be deemed to have agreed to become members of the company and on the incorporation of the company shall be entered as members in its register of members, and every other person who agrees to become a member of a company and whose name is entered in its register of members shall be a member of the company.

(7) The Registrar shall not register a memorandum and articles, if any, of a proposed company unless the memorandum or articles contain the names of at least two persons who are to be the first directors of the proposed company. [16

20.—(1) Without prejudice to the powers of the Registrar under section 12 (5), where a memorandum is delivered for registration under section 19, the Registrar shall not register the memorandum unless he is satisfied that all the requirements of this Act in respect of the registration and of all matters precedent and incidental thereto have been complied with.

Power to
refuse regis-
tration.
15/84.

(2) Notwithstanding anything in this Act or any rule of law, the Registrar shall refuse to register the memorandum of a proposed company where he is satisfied that —

- (a) the proposed company is likely to be used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore; or
- (b) it would be contrary to the national security or interest for the proposed company to be registered.

(3) Any person aggrieved by the decision of the Registrar under subsection (2) may, within 30 days of the date of the decision, appeal to the Minister whose decision shall be final. [16A

21.—(1) A corporation cannot be a member of a company which is its holding company, and any allotment or transfer of shares in a company to its subsidiary shall be void.

Membership
of holding
company.
U.K. s. 27.
Aust. s. 17.

(2) Subsection (1) shall not apply where the subsidiary is concerned as personal representative, or where it is concerned as trustee, unless the holding company or a subsidiary thereof is beneficially interested under the trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

(3) This section shall not prevent a subsidiary which is, at the commencement of this Act, a member of its holding company, from continuing to be a member but, subject to

subsection (2), the subsidiary shall have no right to vote at meetings of the holding company or any class of members thereof.

(4) This section shall not prevent a subsidiary from continuing to be a member of its holding company if, at the time when it becomes a subsidiary thereof, it already holds shares in that holding company, but —

- (a) subject to subsection (2), the subsidiary shall have no right to vote at meetings of the holding company or any class of members thereof; and
- (b) the subsidiary shall, within the period of 12 months or such longer period as the Court may allow after becoming the subsidiary of its holding company, dispose of all of its shares in the holding company.

(5) Subject to subsection (2), subsections (1), (3) and (4) shall apply in relation to a nominee for a corporation which is subsidiary as if references in those subsections to such a corporation included references to a nominee for it.

(6) This section shall not operate to prevent the allotment of shares in a holding company to a subsidiary which already lawfully holds shares in the holding company if the allotment is made by way of capitalisation of reserves of the holding company and is made to all members of the holding company on a basis which is in direct proportion to the number of shares held by each member in the holding company.

(7) Where but for this section a subsidiary would have been entitled to subscribe for shares in the holding company the holding company may, on behalf of the subsidiary, sell the shares for which the subsidiary would otherwise have been entitled to subscribe.

15/84.

(8) In relation to a holding company that is a company limited by guarantee, the reference in this section to shares shall be construed as including a reference to the interest of its members as such, whatever the form of that interest. [17

Require-
ments as to
memo-
randum.
Aust. s. 18.

22.—(1) The memorandum of every company shall be printed and divided into numbered paragraphs and dated and shall state, in addition to other requirements —

- (a) the name of the company;

- (b) the objects of the company;
- (c) unless the company is an unlimited company, the amount of share capital, if any, with which the company proposes to be registered and the division thereof into shares of a fixed amount;
- (d) if the company is a company limited by shares, that the liability of the members is limited;
- (e) if the company is a company limited by guarantee, that the liability of the members is limited and that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding a specified amount;
- (f) if the company is an unlimited company, that the liability of the members is unlimited;
- (g) the full names, addresses and occupations of the subscribers thereto; and
- (h) that such subscribers are desirous of being formed into a company in pursuance of the memorandum and (where the company is to have a share capital) respectively agree to take the number of shares in the capital of the company set out opposite their respective names.

(2) Each subscriber to the memorandum shall, if the company is to have a share capital, in his own handwriting state the number of shares (not being less than one) that he agrees to take and, whether or not the company is to have a share capital, shall sign the memorandum in the presence of at least one witness (not being another subscriber) who shall attest the signature and add his address and occupation. 15/84.

(3) A statement in the memorandum of a company limited by shares that the liability of members is limited shall mean that the liability of the members is limited to the amount, if any, unpaid on the shares respectively held by them.

Division 2 — Powers

Powers of a
company.
Aust. s. 19.

23.—(1) Subject to subsection (2), the powers of a company, whether incorporated before or after the commencement of this Act, shall include —

- (a) power to make donations for patriotic or for charitable purposes;
- (b) power to transact any lawful business in aid of Singapore in the prosecution of any war or hostilities in which Singapore is engaged; and
- (c) unless expressly excluded or modified by the memorandum or articles, the powers set forth in the Third Schedule but the powers of a company which has by the licence of the Minister pursuant to section 29 been registered without the word “Limited” or “Berhad” or pursuant to any corresponding previous written law been registered without the addition of the word “Limited” to its name shall not include any of the powers set forth in the Third Schedule unless expressly included in the memorandum or articles with the approval in writing of the Minister.

Restriction as
to power of
certain com-
panies to
hold lands.

(2) A company formed for the purpose of providing recreation or amusement or promoting commerce, industry, art, science, religion or any other like object not involving the acquisition of gain by the company or by its individual members shall not acquire any land without the licence of the Minister but the Minister may by licence empower any such company to hold lands in such quantity and subject to such conditions as he thinks fit.

(3) A licence given by the Minister under subsection (2) shall be in the prescribed form or as near thereto as circumstances admit.

(4) The decision of the Minister under this section shall be final and shall not be called in question by any court.

[19

Power of
company to
provide for
employees on
cessation of
business.
10/74.

24.—(1) The powers of a company shall, if they would not otherwise do so, be deemed to include power to make provision, in connection with any cessation of the whole or any part of the business carried on by the company or any subsidiary of the company, for the benefit of persons

employed or formerly employed by the company or its subsidiary.

(2) Subsection (1) relates only to the capacity of a company as a body corporate and is without prejudice to any provision in a company's memorandum or articles requiring any exercise of the power mentioned in that subsection to be approved by the company in general meeting or otherwise prescribing the manner in which that power is to be exercised. [19A

25.—(1) No act or purported act of a company (including the entering into of an agreement by the company and including any act done on behalf of a company by an officer or agent of the company under any purported authority, whether express or implied, of the company) and no conveyance or transfer of property, whether real or personal, to or by a company shall be invalid by reason only of the fact that the company was without capacity or power to do such act or to execute or take such conveyance or transfer.

Ultra vires
transactions.
Aust. s. 20.

(2) Any such lack of capacity or power may be asserted or relied upon only in —

- (a) proceedings against the company by any member of the company or, where the company has issued debentures secured by a floating charge over all or any of the company's property, by the holder of any of those debentures or the trustee for the holders of those debentures to restrain the doing of any act or acts or the conveyance or transfer of any property to or by the company;
- (b) any proceedings by the company or by any member of the company against the present or former officers of the company; or
- (c) any petition by the Minister to wind up the company.

(3) If the unauthorised act, conveyance or transfer sought to be restrained in any proceedings under subsection (2) (a) is being or is to be performed or made pursuant to any contract to which the company is a party, the Court may, if all the parties to the contract are parties to the proceedings and if the Court considers it to be just and

equitable, set aside and restrain the performance of the contract and may allow to the company or to the other parties to the contract, as the case requires, compensation for the loss or damage sustained by either of them which may result from the action of the Court in setting aside and restraining the performance of the contract but anticipated profits to be derived from the performance of the contract shall not be awarded by the Court as a loss or damage sustained. [20

General provisions as to alteration of memorandum.
 Aust. s. 21.
 15/84.

26.—(1) The memorandum of a company may be altered to the extent and in the manner provided by this Act but not otherwise.

(2) In addition to observing and subject to any other provision of this Act requiring the lodging with the Registrar of any resolution of a company or order of the Court or other document affecting the memorandum of a company, the company shall within 14 days after the passing of any such resolution or the making of any such order lodge with the Registrar a copy of such resolution or other document or an office copy of such order together with (unless the Registrar dispenses therewith) a printed copy of the memorandum as altered, and if default is made in complying with this subsection the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

(3) The Registrar shall register every resolution, order or other document lodged with him under this Act that affects the memorandum of a company and, where an order is so registered shall certify the registration of that order.

(4) The certificate of the Registrar shall be conclusive evidence that all the requirements of this Act with respect to the alteration and any confirmation thereof have been complied with.

(5) Notice of the registration shall be published in such manner, if any, as the Court or the Registrar directs.

(6) The Registrar shall, where appropriate, issue a certificate of incorporation in accordance with the alteration made to the memorandum. [21

27.—(1) Except with the consent of the Minister, a company shall not be registered by a name that in the opinion of the Registrar —

Names of
companies.
U.K. s. 17.
Aust. s. 22.
15/84.

- (a) is undesirable;
- (b) is identical to that of any other company, corporation or business name;
- (c) so nearly resembles the name of another company, corporation or business name as to be likely to be mistaken for it; or
- (d) is a name of a kind that the Minister has directed the Registrar not to accept for registration.

(2) Notwithstanding anything in this section and section 28, where the Registrar is satisfied that a company has been registered by a name (whether through inadvertence or otherwise and whether originally or by change of name) which —

- (a) is identical to that of any other company or corporation; or
- (b) so nearly resembles the name of another company or corporation as to be likely to be mistaken for it,

the Registrar, may direct the first-mentioned company to change its name and the company shall comply with that direction within 6 weeks after the date of the direction or such longer period as the Registrar allows and if the company fails so to comply the company and its officers shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty.

(3) In subsection (1), “business name” has the meaning assigned to that expression in the Business Registration Act.

(4) For the purpose of subsection (2), the reference to a corporation therein shall include a reference to a corporation whether or not it is registered under Division 2 of Part XI.

(5) A company aggrieved by the decision of the Registrar under subsection (2) may within 30 days of the date of the decision appeal to the Minister whose decision shall be final.

(6) The Minister shall cause a direction given by him under subsection (1) to be published in the *Gazette*.

(7) A limited company shall have either “Limited” or “Berhad” as part of and at the end of its name.

(8) A private company shall have the word “Private” or “Sendirian” as part of its name, inserted immediately before the word “Limited” or “Berhad” or, in the case of an unlimited company, at the end of its name.

(9) It shall be lawful to use and no description of a company shall be deemed inadequate or incorrect by reason of the use of —

- (a) the abbreviation “Pte.” in lieu of the word “Private” or the abbreviation “Sdn.” in lieu of the word “Sendirian” contained in the name of a company;
- (b) the abbreviation “Ltd.” in lieu of the word “Limited” or the abbreviation “Bhd.” in lieu of the word “Berhad” contained in the name of a company; or
- (c) any of such words in lieu of the corresponding abbreviation contained in the name of a company.

(10) A person may apply in the prescribed form to the Registrar for the reservation of a name set out in the application as —

- (a) the name of an intended company;
- (b) the name to which a company proposes to change its name; or
- (c) the name under which a foreign company proposes to be registered, either originally or on change of name.

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(11) A company shall not be registered under section 19 (1) and the Registrar shall not approve the change of name of a company under section 28 (2) unless the name which it is proposed to be registered or the proposed new name, as the case may be, has been reserved under subsection (12).

(12) If the Registrar is satisfied as to the bona fides of the application and that the proposed name is a name by which the intended company, company or foreign company could be registered without contravention of subsection (1), he shall reserve the proposed name for a period of two months from the date of the lodging of the application.

(13) If, at any time during a period for which a name is reserved, application is made to the Registrar for an extension of that period and the Registrar is satisfied as to the bona fides of the application, he may extend that period for a further period of two months.

(14) During a period for which a name is reserved, no company or foreign company (other than the intended company, company or foreign company in respect of which the name is reserved) shall be registered under this Act, whether originally or on change of name, under the reserved name or under any other name that, in the opinion of the Registrar, so closely resembles the reserved name as to be likely to be mistaken for that name.

(15) The reservation of a name under this section in respect of an intended company, company or foreign company does not in itself entitle the intended company, company or foreign company to be registered by that name, either originally or on change of name. [22

28.—(1) A company may by special resolution resolve that its name should be changed to a name by which the company could have been registered without contravention of section 27 (1).

Change
of name.
U.K. s. 18.
Aust. s. 23.

(2) If the Registrar approves the name which the company has resolved should be its new name he shall on payment of the prescribed fee issue a certificate of incorporation of the company under the new name and upon the issue of such certificate of incorporation the change of name shall become effective.

(3) If the name of a company is (whether through inadvertence or otherwise and whether originally or by change of name) a name by which the company could not be registered without contravention of section 27 (1), the company may by special resolution change its name to a name by which the company could be registered without contravention of that subsection and, if the Registrar so directs, shall so change it within 6 weeks after the date of the direction or such longer period as the Registrar allows unless the Minister by written notice annuls such direction, and if the company fails to comply with the direction it shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty.

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(4) Where the name of a company incorporated pursuant to any corresponding previous written law has not been changed since the commencement of this Act, the Registrar shall not, except with the approval of the Minister, exercise his power under subsection (3) to direct the company to change its name.

(5) Where, upon the commencement of this Act, a company which is a private company does not have the word "Private" or "Sendirian" as part of its name immediately before the word "Limited" or "Berhad" or in the case of an unlimited company at the end of its name, the company shall be deemed to have altered its name to include the word "Private" or "Sendirian" immediately before the word "Limited" or "Berhad" or in the case of an unlimited company at the end of its name and the Registrar shall as soon as practicable after the commencement of this Act alter the name of the company set forth in the memorandum accordingly and issue a new certificate of incorporation in the name of the company as so altered.

(6) A change of name pursuant to this Act shall not affect the identity of the company or any rights or obligations of the company or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name. [23

Omission of
"Limited" or
"Berhad" in
name of
charitable
and other
companies.
U.K. s. 19.
Aust. s. 24.

29.—(1) Where it is proved to the satisfaction of the Minister that a proposed limited company is being formed for the purpose of providing recreation or amusement or promoting commerce, industry, art, science, religion, charity, pension or superannuation schemes or any other object useful to the community, that it has some basis of national or general public interest and that it is in a financial position to carry out the objects for which it is to be formed and will apply its profits (if any) or other income in promoting its objects and will prohibit the payment of any dividend to its members, the Minister may (after requiring, if he thinks fit, the proposal to be advertised in such manner as he directs either generally or in a particular case) by licence direct that it be registered as a company with limited liability without the addition of the word "Limited" or "Berhad" to its name, and the company may be registered accordingly.

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

- (a) that the objects of a limited company are restricted to those specified in subsection (1) and to objects incidental or conducive thereto;
- (b) that the company has some basis of national or general public interest;
- (c) that the company is in a financial position to carry out the objects for which it was formed; and
- (d) that by its constitution the company is required to apply its profits, if any, or other income in promoting its objects and is prohibited from paying any dividend to its members,

the Minister may by licence authorise the company to change its name to a name which does not contain the word “Limited” or “Berhad”, being a name approved by the Registrar.

(3) A licence under this section may be issued on such conditions as the Minister thinks fit, and those conditions shall be binding on the company and shall, if the Minister so directs, be inserted in the memorandum or articles of the company and the memorandum or articles may by special resolution be altered to give effect to any such direction.

(4) Where the memorandum or articles of a company include, as a result of a direction of the Minister given pursuant to subsection (3) or pursuant to any corresponding previous written law, a provision that the memorandum or articles shall not be altered except with the consent of the Minister, the company may, with the consent of the Minister, by special resolution alter any provision of the memorandum or articles.

(5) A company shall, while a licence granted by the Minister under this or under any corresponding previous enactment is in force, be exempted from complying with the provisions of this Act relating to the use of the word “Limited” or “Berhad” as any part of its name.

(6) A licence under this section or under any corresponding previous written law may at any time be revoked by the Minister and, upon revocation, the Registrar shall enter the word “Limited” or “Berhad” at the end of the name of the company upon the register, and the company shall

thereupon cease to enjoy the exemption granted by reason of the licence under this section but before a licence is so revoked the Minister shall give to the company notice in writing of his intention and shall afford it an opportunity to be heard.

(7) Where a licence under this section or under any corresponding previous written law is revoked the memorandum or articles of the company may be altered by special resolution so as to remove any provision in or to the effect that the memorandum or articles may be altered only with the consent of the Minister and section 23 (1) (c) shall apply to the company as if it had never had a licence under this section. [24

Registration
of unlimited
company as
limited com-
pany, etc.
15/84.

30.—(1) Subject to this section —

- (a) an unlimited company may convert to a limited company if it was not previously a limited company that became an unlimited company in pursuance of paragraph (b); and
- (b) a limited company may convert to an unlimited company if it was not previously an unlimited company that became a limited company in pursuance of paragraph (a) or any corresponding previous written law.

(2) Where a company applies in writing to the Registrar for a change of status as provided by subsection (1) and, subject to section 33 (8) and (9) as applied by subsection (7), lodges with the application the prescribed documents relating to the application, the Registrar shall, upon registration of such prescribed documents so lodged as are registrable under this Act, issue to the company a certificate of incorporation —

- (a) appropriate to the change of status applied for; and
- (b) specifying, in addition to the particulars prescribed in respect of a certificate of incorporation of a company of that status, that the certificate is issued in pursuance of this section,

and, upon the issue of such a certificate of incorporation, the company shall be deemed to be a company having the status specified therein.

(3) Where the status of a company is changed in pursuance of this section, notice of the change of status shall be published in such manner, if any, as the Registrar may direct.

(4) In subsection (2), “prescribed documents”, in relation to an application referred to in that subsection, means —

(a) a printed copy of a special resolution of the company —

(i) resolving to change the status of the company and specifying the status sought;

(ii) making such alterations to the memorandum of the company as are necessary to bring the memorandum into conformity with the requirements of this Act relating to the memorandum of a company of the status sought;

(iii) making — where the company has registered articles — such alterations and additions to the articles, if any, as are necessary to bring the articles into conformity with the requirements of this Act relating to the articles of a company of the status sought;

(iv) adopting — where the company has no registered articles — such articles, if any, as are required by this Act to be registered in respect of a company of the status sought or are proposed by the company as the registered articles of the company upon the change in its status; and

(v) changing the name of the company to a name by which it could be registered if it were a company of the status sought;

(b) where, by a special resolution referred to in paragraph (a), the memorandum of the company is altered or the articles of the company are altered or added to, or articles are adopted by the company — a printed copy of the memorandum as altered, the articles as altered or added to, or the articles adopted, as the case may be; and

- (c) in the case of an application by a limited company to convert to an unlimited company —
- (i) the prescribed form of assent to the application subscribed by or on behalf of all the members of the company; and
 - (ii) a statutory declaration by a director or secretary of the company verifying that the persons by whom or on whose behalf such a form of assent is subscribed constitute the whole membership of the company and, if a member has not subscribed the form himself, that the director or the secretary making the declaration has taken all reasonable steps to satisfy himself that each person who subscribed the form was lawfully empowered to do so.

(5) Section 26 (2) to (6) shall not apply to or in relation to an application under this section or to any prescribed documents in relation to the application.

(6) A special resolution passed for the purposes of an application under this section shall take effect only upon the issue under this section of a certificate of incorporation of the company to which the resolution relates.

(7) With such modifications as may be necessary, section 33 (except subsection (1) thereof) applies to and in respect of the proposal, passing and lodging, and the cancellation or confirmation by the Court, of a special resolution relating to a change of status as if it were a special resolution under that section.

(8) A change in the status of a company in pursuance of this section does not operate —

- (a) to create a new legal entity;
- (b) to prejudice or affect the identity of the body corporate constituted by the company or its continuity as a body corporate;
- (c) to affect the property, or the rights or obligations, of the company; or
- (d) to render defective any legal proceedings by or against the company,

and any legal proceedings that could have been continued or commenced by or against it prior to the change in its status may, notwithstanding the change in its status, be continued or commenced by or against it after the change in its status. [25

31.—(1) A public company having a share capital may convert to a private company by lodging with the Registrar a copy of a special resolution — Change from public to private company. Aust. s. 26.

- (a) determining to convert to a private company and specifying an appropriate alteration to its name; and
- (b) altering the provisions of its memorandum or articles so far as is necessary to impose the restrictions, limitations and prohibitions referred to in section 18 (1).

(2) A private company may, subject to its memorandum or articles, convert to a public company by lodging with the Registrar — Change from private to public company.

- (a) a copy of a special resolution determining to convert to a public company and specifying an appropriate alteration to its name;
- (b) a statement in lieu of prospectus; and
- (c) a statutory declaration in the prescribed form verifying that section 61 (2) (b) has been complied with,

and thereupon the restrictions, limitations and prohibitions referred to in section 18 (1) as included in or deemed to be included in the memorandum or articles of such company shall cease to form part of the memorandum or articles.

(3) On compliance by a company with subsection (1) or (2) and on the issue of a certificate of incorporation of the company altered accordingly the company shall be a private company or a public company (as the case requires).

(4) A conversion of a company pursuant to subsection (1) or (2) shall not affect the identity of the company or any rights or obligations of the company or render defective any legal proceedings by or against the company, and any legal proceedings that could have been continued or commenced by or against it prior to the conversion may, notwithstanding

any change in the company's name or capacity in consequence of the conversion, be continued or commenced by or against it after the conversion. [26

Default in complying with requirements as to private companies.
U.K. s. 29.
Aust. s. 27.
15/84.

32.—(1) Where, on the application of the Minister with respect to a private company or of any member or creditor of a private company, the Court is satisfied that default has been made in relation to the company in complying with a prohibition of a kind specified in section 18 (1) (c) or (d) that is included, or is deemed to be included, in the memorandum or articles of the company the Court may by order determine that, on such date as the Court specifies in its order, the company ceased to be a private company.

(2) Where —

- (a) default has been made in relation to a private company in complying with a limitation of a kind specified in section 18 (1) (b) that is included, or is deemed to be included in the memorandum or articles of the company;
- (b) a private company has been convicted of an offence under subsection (7);
- (c) the memorandum or articles of a private company have been so altered that they no longer include restrictions, limitations or prohibitions of the kinds specified in section 18 (1); or
- (d) a private company has ceased to have a share capital,

the Registrar may by notice served on the company determine that, on such date as is specified in the notice, the company ceased to be a private company.

(3) Where, under this section, the Court or the Registrar determines that a company has ceased to be a private company —

- (a) the company shall be a public company and shall be deemed to have been a public company on and from the date specified in the order or notice;
- (b) the company shall, on the date so specified be deemed to have changed its name by the omission from its name of the word "Private" or the word "Sendirian", as the case requires; and

- (c) the company shall, within a period of 14 days after the date of the order or the notice, lodge with the Registrar —
- (i) a statement in lieu of prospectus;
 - (ii) a statutory declaration in the prescribed form verifying that section 61 (2) (b) has been complied with; and
 - (iii) where an order has been made under subsection (1) an office copy of the order.

(4) Where the Court is satisfied that a default or alteration referred to in subsection (1) or (2) has occurred but that it was accidental or due to inadvertence or to some other sufficient cause or that on other grounds it is just and equitable to grant relief, the Court may, on such terms and conditions as to the Court seem just and expedient, determine that the company has not ceased to be a private company.

(5) A company that, by virtue of a determination made under this section, has become a public company shall not convert to a private company without the leave of the Court.

(6) If default is made in complying with subsection (3) (c), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty. 15/84.

(7) Where any subscription for shares in or debentures of, or any deposit of money with, a private company is arranged by or through a solicitor, broker, agent or any other person (whether an officer of the company or not) who invites the public to make use of his services in arranging investments or who holds himself out to the public as being in a position to arrange investments, the company and every person, including an officer of the company, who is a party to the arrangement shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding one year. 15/84.

(8) Where default is made in relation to a private company in complying with any restriction, limitation or 15/84.

prohibition of a kind specified in section 18 (1) that is included, or deemed to be included, in the memorandum or articles of the company, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding one year. [27

Alterations
of objects
in memo-
randum.
U.K. s. 5.
Aust. s. 28.

33.—(1) Subject to this section, a company may by special resolution alter the provisions of its memorandum with respect to the objects of the company.

(2) Where a company proposes to alter its memorandum, with respect to the objects of the company, it shall give by post 21 days' written notice specifying the intention to propose the resolution as a special resolution and to submit it for passing to a meeting of the company to be held on a day specified in the notice.

(3) The notice shall be given to all members, and to all trustees for debenture holders and, if there are no trustees for any class of debenture holders, to all debenture holders of that class whose names are, at the time of the posting of the notice, known to the company.

(4) The Court may in the case of any person or class of persons for such reasons as to it seem sufficient dispense with the notice required by subsection (2).

(5) If an application for the cancellation of an alteration is made to the Court in accordance with this section by —

(a) the holders of not less in the aggregate than 5% in nominal value of the company's issued share capital or any class of that capital or, if the company is not limited by shares, not less than 5% of the company's members; or

(b) the holders of not less than 5% in nominal value of the company's debentures,

the alteration shall not have effect except so far as it is confirmed by the Court.

(6) The application shall be made within 21 days after the date on which the resolution altering the company's objects was passed, and may be made on behalf of the persons entitled to make the application by such one or more of their number as they appoint in writing for the purpose.

10/74.

(7) On the application the Court —

- (a) shall have regard to the rights and interests of the members of the company or of any class of them as well as to the rights and interests of the creditors;
- (b) may if it thinks fit adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase (otherwise than by the company) of the interests of dissentient members;
- (c) may give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement; and
- (d) may make an order cancelling the alteration or confirming the alteration either wholly or in part and on such terms and conditions as it thinks fit.

(8) Notwithstanding any other provision of this Act, a copy of a resolution altering the objects of a company shall not be lodged with the Registrar before the expiration of 21 days after the passing of the resolution or if any application to the Court has been made before the application has been determined by the Court, whichever is the later.

(9) A copy of the resolution shall be lodged with the Registrar by the company within 14 days after the expiration of the 21 days referred to in subsection (8), but if an application has been made to the Court in accordance with this section the copy shall be lodged with the Registrar together with an office copy of the order of the Court within 14 days after the application has been determined by the Court.

(10) On compliance by a company with subsection (9) the alteration, if any, of the objects shall take effect. [28

34. Notwithstanding anything in the memorandum of a company, a company to which section 14 of the Residential Property Act applies may, by virtue of the operation of section 14 (3) of that Act, amend its memorandum by special resolution to remove any of the provisions referred to in section 10 (1) of that Act except that any amendment so made shall be valid and take effect only to the extent that it conforms with the provisions of that Act. [28A

Alteration of memorandum by company to which section 14 of Residential Property Act applies. Cap. 274. 15/84.

Articles of
association.
U.K. ss. 6, 7.
Aust. s. 29.
15/84.

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

15/84.

(2) Articles shall be —

- (a) printed;
- (b) divided into numbered paragraphs; and
- (c) signed by each subscriber to the memorandum in the presence of at least one witness (not being another subscriber) who must attest the signature and add his address and occupation.

(3) In the case of an unlimited company the articles, if the company has a share capital, shall state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount.

15/84.

(4) In the case of an unlimited company or a company limited by guarantee the articles shall state the number of members with which the company proposes to be registered.

(5) Where a company to which subsection (4) applies increases the number of its members beyond the registered number it shall, within one month after the increase was resolved on or took place, lodge with the Registrar notice of the increase.

15/84.

(6) Every company which makes default in complying with subsection (5) and every officer of the company who is in default in complying with that subsection shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty. [29

Adoption of
Table A in
Fourth
Schedule.
U.K. s. 8.
Aust. s. 30.

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

(2) In the case of a company limited by shares incorporated after the commencement of this Act, if articles are not registered, or if articles are registered then, in so far as the articles do not exclude or modify the regulations contained in Table A, those regulations shall so far as applicable be the articles of the company in the same

manner and to the same extent as if they were contained in registered articles. [30]

37.—(1) Subject to this Act and to any conditions in its memorandum, a company may by special resolution alter or add to its articles.

Alteration of articles. U.K. s. 10. Aust. s. 31.

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

(3) Subject to this section, any company shall have the power and shall be deemed always to have had the power to amend its articles by the adoption of all or any of the regulations contained in Table A, by reference only to the regulations in that Table or to the numbers of particular regulations contained therein, without being required in the special resolution effecting the amendment to set out the text of the regulations so adopted. [31]

38.—(1) In the case of a company limited by guarantee every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company, otherwise than as a member, shall be void.

As to memorandum and articles of companies limited by guarantee. U.K. s. 21. Aust. s. 32. 15/84.

(2) For the purposes of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles or in any resolution of a company limited by guarantee purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital notwithstanding that the nominal amount or number of the shares or interests is not specified thereby. [32]

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

Effect of memorandum and articles. U.K. ss. 20, 22. Aust. s. 33.

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

As to effect of alterations on members who do not consent.

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

[33

Copies of memorandum and articles.
U.K. ss. 24, 25.
Aust. s. 34.

40.—(1) A company shall, on being so required by any member, send to him a copy of the memorandum and of the articles, if any, subject to payment of \$5 or such lesser sum as is fixed by the directors.

(2) Where an alteration is made in the memorandum or articles of a company, a copy of the memorandum or articles shall not be issued by the company after the date of alteration unless —

- (a) the copy is in accordance with the alteration; or
- (b) a printed copy of the order or resolution making the alteration is annexed to the copy of the memorandum or articles and the particular clauses or articles affected are indicated in ink.

(3) Where an agreement required to be lodged with the Registrar under section 186 affects the memorandum or articles of a company, a copy of the memorandum or articles shall not be issued by the company after the agreement is entered into unless a copy of the agreement is annexed to the copy of the memorandum or articles.

(4) If default is made in complying with this section the company and every officer of the company who is in default shall be guilty of an offence.

[34

Ratification by company of contracts made before incorporation.
10/74.

41.—(1) Any contract or other transaction purporting to be entered into by a company prior to its formation or by any person on behalf of a company prior to its formation may be ratified by the company after its formation and thereupon the company shall become bound by and entitled

to the benefit thereof as if it had been in existence at the date of the contract or other transaction and had been a party thereto.

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

(3) Contracts on behalf of a company may be made as follows:

- (a) a contract which if made between private persons would by law be required to be in writing under seal may be made on behalf of the company in writing under the common seal of the company;
- (b) a contract which if made between private persons would by law be required to be in writing signed by the parties to be charged therewith may be made on behalf of the company in writing signed by any person acting under its authority, express or implied;
- (c) a contract which if made between private persons would by law be valid although made by parol only (and not reduced into writing) may be made by parol on behalf of the company by any person acting under its authority, express or implied,

and any contract so made shall be effectual in law and shall bind the company and its successors and all other parties thereto and may be varied or discharged in the manner in which it is authorised to be made.

(4) A document or proceeding requiring authentication by a company may be signed by an authorised officer of the company and need not be under its common seal.

U.K. ss.
32-36.
Aust. s.
35 (1).

Authentica-
tion of
documents.
Aust. s. 35
(2).

(5) A company may by writing under its common seal empower any person, either generally or in respect of any specified matters, as its agent or attorney to execute deeds on its behalf and a deed signed by such an agent or attorney on behalf of the company and under his seal, or, subject to subsection (7), under the appropriate official seal of the company shall bind the company and have the same effect as if it were under its common seal.

Execution
of deeds.
Aust. s. 35
(3).

Aust. s. 35
(4).

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

Official seal
for use
abroad.
Aust. s. 35
(5).

(7) A company whose objects require or comprise the transaction of business outside Singapore may, if authorised by its articles, have for use in any place outside Singapore an official seal, which shall be a facsimile of the common seal of the company with the addition on its face of the name of the place where it is to be used and the person affixing any such official seal shall, in writing under his hand, certify on the instrument to which it is affixed the date on which and the place at which it is affixed. [35]

Prohibition
of carrying on
business with
fewer than
statutory
minimum of
members.
U.K. s. 31.
Aust. s. 36.
15/84.

42. If at any time the number of members of a company (other than a company the whole of the issued shares of which are held by a holding company) is reduced below two and it carries on business for more than 6 months while the number is so reduced, a person who is a member of the company during the time that it so carries on business after those 6 months and is cognizant of the fact that it is carrying on business with fewer than two members shall be liable for the payment of all the debts of the company contracted during the time that it so carries on business after those 6 months and may be sued therefor, and if the company so carries on business after those 6 months, the company and such member shall be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty. [36]

PART IV

SHARES, DEBENTURES AND CHARGES

Division 1 — Prospectuses

Requirement
to issue form
of application
for shares or
debentures
with a pros-
pectus.
U.K. s. 38
(3), (5).
Aust. s. 37.

43.—(1) A person shall not issue, circulate or distribute any form of application for shares in or debentures of a corporation unless the form is issued, circulated or distributed together with a prospectus a copy of which has been registered by the Registrar.

(2) Subsection (1) shall not apply if —

- (a) the form of application is issued, circulated or distributed in connection with shares or debentures which are not offered to the public; or
- (b) the form of application is issued, circulated or distributed in connection with a take-over scheme which complies with the provisions of this Act applicable to such schemes,

but otherwise that subsection shall apply to any such form of application whether issued, circulated or distributed on or with reference to the formation of a corporation or subsequently.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years. 15/84.
[37

44.—(1) An invitation to the public to deposit money with or lend money to a corporation or proposed corporation shall not be issued, circulated or distributed by the corporation or by any other person unless —

- (a) a prospectus in relation to the invitation has been registered by the Registrar;
- (b) the prospectus contains an undertaking by the corporation that it will, within two months after the acceptance of any money as a deposit or loan from any person in response to the invitation, issue to that person a document which acknowledges or evidences or constitutes an acknowledgment of the indebtedness of the corporation in respect of that deposit or loan; and
- (c) the document is described or referred to in the prospectus and in any other document whether constituting or relating to the invitation as —
 - (i) an unsecured note or an unsecured deposit note;
 - (ii) a mortgage debenture or certificate of mortgage debenture stock; or
 - (iii) a debenture or certificate of debenture stock,

in accordance with this section.

As to invitations to the public to lend money to or to deposit money with a corporation. Aust. s. 38.

(2) Where pursuant to an invitation referred to in subsection (1) a corporation has accepted from any person any money as a deposit or loan the corporation shall within two months after the acceptance of the money issue to that person a document which —

- (a) acknowledges or evidences or constitutes an acknowledgment of the indebtedness of the corporation in respect of that deposit or loan; and
- (b) complies with the other requirements of this section.

(3) The document shall be described or referred to in the prospectus and in any other document whether constituting or relating to the invitation and in the document itself as an unsecured note or an unsecured deposit note unless pursuant to subsection (4) or (5) it is and may be otherwise described.

(4) The document may be described or referred to in the prospectus or in such other document or in the document itself as a mortgage debenture or certificate of mortgage debenture stock if, and only if, there is included in the prospectus the statements and the valuation referred to in paragraph 32 of the Fifth Schedule.

(5) The document may be described or referred to in the prospectus or in such other document or in the document itself as a debenture or certificate of debenture stock if, and only if —

- (a) pursuant to subsection (4) it may be (but is not) described or referred to in that prospectus or document as a mortgage debenture or certificate of mortgage debenture stock; or
- (b) there is included in the prospectus the statement and the summary referred to in paragraph 33 of the Fifth Schedule.

(6) Nothing in this section shall apply to a prescribed corporation and nothing in this Act shall require a prospectus to be issued in connection with any invitation to the public to deposit money with a prescribed corporation.

(7) In subsection (6), “prescribed corporation” means —

- (a) a banking corporation; or
- (b) a corporation or a corporation of a class which has been declared by the Minister by notification in

the *Gazette* to be a prescribed corporation for the purposes of this section.

(8) The Minister may, by notification in the *Gazette* —

- (a) specify terms and conditions subject to which subsection (6) shall have effect in relation to a corporation specified in subsection (7) (b); or
- (b) vary or revoke any declaration or specification made under this section.

(9) Every corporation or other person that contravenes ^{15/84.} or fails to comply with any of the provisions of this section and every officer of a corporation who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years.

(10) This section relating to the description of any document acknowledging or evidencing or intended to acknowledge or evidence the indebtedness of a corporation shall apply to and in relation to every such document issued after the commencement of this Act notwithstanding anything in any existing debenture or trust deed and any such document issued after the commencement of this Act may be described in accordance with the requirements of this section notwithstanding anything in any such existing debenture or trust deed.

(11) For the purposes of this section, a document issued by a borrowing corporation certifying that a person named therein is in respect of any deposit with or loan to the corporation the registered holder of a specified number or value —

- (a) of unsecured notes or unsecured deposit notes;
- (b) of mortgage debentures or mortgage debenture stock; or
- (c) of debentures or debenture stock,

issued by the corporation upon or subject to the terms and conditions contained in a trust deed referred to or identified in the certificate, shall be deemed to be a document evidencing the indebtedness of that corporation in respect of that deposit or loan.

Contents of
prospectuses.
U.K. ss. 37,
38.
Aust. s. 39.

45.—(1) To comply with the requirements of this Act a prospectus —

- (a) shall be printed in type of a size not less than the type known as 8 point Times unless the Registrar, before the issuing, advertising, circulating or distributing of the prospectus in Singapore, certifies in writing, that the type and size of letters are legible and satisfactory;
- (b) shall be dated and that date shall, unless the contrary is proved, be taken as the date of issue of the prospectus;
- (c) shall be lodged with the Registrar and shall state that a copy of the prospectus has been so lodged with and registered by the Registrar and shall also state immediately after such statement that the Registrar takes no responsibility as to its contents;
- (d) shall, subject to the provisions in Part III of the Fifth Schedule, state the matters specified in Part I of that Schedule and set out the reports specified in Part II of that Schedule;
- (e) shall, where the persons making any report specified in Part II of the Fifth Schedule, have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in paragraph 31 of that Schedule, have endorsed thereon or attached thereto, a statement by those persons setting out the adjustments and giving the reasons therefor;
- (f) shall contain a statement that no shares or debentures or that no shares and debentures (as the case requires) shall be allotted on the basis of the prospectus later than 6 months after the date of the issue of the prospectus;
- (g) shall, if it contains any statement made by an expert or contains what purports to be a copy of or extract from a report, memorandum or valuation of an expert, state the date on which the statement, report, memorandum or valuation was made and whether or not it was prepared by the expert for incorporation in the prospectus;

- (h) shall not contain the name of any person as a trustee for holders of debentures or as an auditor or a banker or a solicitor or a stock broker or share broker of the corporation or proposed corporation or for or in relation to the issue or proposed issue of shares or debentures unless that person has consented in writing before the issue of the prospectus to act in that capacity in relation to the prospectus and, in the case of a company or proposed company, a copy verified as prescribed of the consent has been lodged with the Registrar; and
- (i) shall, where the prospectus offers shares in or debentures of a foreign company incorporated or to be incorporated, in addition contain particulars with respect to —
- (A) the instrument constituting or defining the constitution of the company;
 - (B) the enactments or provisions having the force of an enactment by or under which the incorporation of the company was effected or is to be effected;
 - (C) an address in Singapore where such instrument, enactments or provisions or certified copies thereof may be inspected;
 - (D) the date on which and the place where the company was or is to be incorporated; and
 - (E) whether the company has established a place of business in Singapore and, if so, the address of its principal office in Singapore.

(2) Sub-paragraphs (A), (B) and (C) of subsection (1) (i) shall not apply in the case of a prospectus issued more than two years after the date on which the company is entitled to commence business and in the application to a foreign company of Part I of the Fifth Schedule for the purposes of that subsection, paragraph 2 of that Part shall have effect as if a reference to the constitution of the company were substituted for the reference to the articles.

(3) A condition requiring or binding an applicant for shares in or debentures of a corporation to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus shall be void.

15/84.

(4) Where a prospectus relating to any shares in or debentures of a corporation is issued and the prospectus does not comply with the requirements of this Act, each director of the corporation and other person responsible for the prospectus shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years.

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

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

(6) In the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph 17 of the Fifth Schedule no director or other person shall incur any liability in respect of the failure unless it is proved that he had knowledge of the matters not disclosed.

(7) Nothing in this section shall limit or diminish any liability which any person may incur under any rule of law or any written law or under this Act apart from subsection (4).

62/70.

(8) The Minister may, by notification in the *Gazette*, add to, vary or amend the Fifth Schedule. [39

46.—(1) A person may apply to the Registrar in writing for an order of exemption from any requirements of this Act relating to the form and content of a prospectus, and the Registrar may make such an order either unconditionally or on such terms and conditions as he may think fit to impose.

Exemption from requirements as to form and content of prospectus. 49/73.

(2) The Registrar shall not make an order under subsection (1) unless he is of the opinion that compliance with the requirements in respect of which exemption has been applied for would be unduly burdensome.

(3) A prospectus shall be deemed to comply with all the requirements of this Act relating to the form and content of a prospectus if it is issued in compliance with an order made under subsection (1). [39A

47.—(1) Any offer or invitation with respect to shares or debentures of a corporation shall be deemed to be an offer to the public if it is an offer or invitation by means of a rights issue which is renounceable in favour of persons other than existing members or debenture holders of that corporation and an application has been or will be made for permission to deal with or quote such shares or debentures on any stock exchange.

Abridged prospectus for renounceable rights issues. 15/84.

(2) Where subsection (1) applies to any offer or invitation, the Registrar may, on application to him in writing, permit an abridged prospectus to be registered in respect of the rights issue containing the particulars set out in Part V of the Fifth Schedule, if he is of the opinion that compliance with the other parts of the Fifth Schedule would be unduly burdensome.

(3) Unless the Registrar permits an abridged prospectus to be registered, the requirements of the Fifth Schedule (other than Part V) shall apply in respect of an offer or invitation referred to in subsection (1).

(4) Any abridged prospectus registered pursuant to subsection (2) shall be deemed to be a prospectus for the purposes of this Act and all written law and rules of law as to contents of prospectuses (to the extent that may be applicable) and as to liability in respect of statements in and omissions from prospectuses or otherwise relating to prospectuses shall apply to an abridged prospectus and have effect accordingly. [39B

Certain advertisements deemed to be prospectuses. Aust. s. 40.

48.—(1) Every advertisement offering or calling attention to an offer or intended offer of shares in or debentures of a corporation or proposed corporation to the public for subscription or purchase shall be deemed to be a prospectus (and all written laws and rules of law as to the contents of prospectuses and as to liability in respect of statements in and omissions from prospectuses or otherwise relating to prospectuses shall apply and have effect accordingly) if it contains any information or matter other than the following:

- (a) the number and description of the shares or debentures concerned;
- (b) the name and date of registration of the corporation and its paid-up share capital;
- (c) a concise statement of the general nature of the main business or proposed main business of the corporation;
- (d) the names, addresses and occupations of —
 - (i) the directors or proposed directors;
 - (ii) the brokers or underwriters to the issue; and
 - (iii) in the case of debentures, the trustee for the debenture holders;
- (e) the name of the stock exchange of which the brokers or underwriters to the issue are members;
- (f) particulars of the opening and closing dates of the offer and the time and place at which copies of the full prospectus and forms of application for the shares or debentures may be obtained; and
- (g) statements with respect to the sale price of units, or the yield therefrom or other benefits received or likely to be received by holders of units in relation to authorised unit trust schemes,

and unless it states that applications for shares or debentures will proceed only on one of the forms of application referred to in and attached to a printed copy of the prospectus.

(2) No statement that, or to the effect that, the advertisement is not a prospectus shall affect the operation of this section.

(3) This section shall apply to advertisements published or disseminated in Singapore by newspaper, broadcasting, television, cinematograph or any other means whatsoever.

(4) Where an advertisement that is deemed to be a prospectus by virtue of subsection (1) does not comply with the requirements of this Act as to prospectuses, the person who published or disseminated the advertisement, and every officer of the corporation concerned, or other person, who knowingly authorised or permitted the publication or dissemination shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding one year. ^{15/84.}

(5) For the purposes of this section, where —

- (a) an advertisement offering or calling attention to an offer or intended offer of shares in or debentures of a corporation or proposed corporation to the public for subscription or purchase is published or disseminated;
- (b) the person who published or disseminated the advertisement before so doing obtained a certificate signed by at least two directors of the corporation, or two proposed directors of the proposed corporation, that the proposed advertisement is an advertisement that will not be deemed to be a prospectus by virtue of subsection (1); and
- (c) the advertisement is not patently an advertisement that is deemed to be a prospectus by virtue of that subsection,

the corporation and each person who signed the certificate shall be deemed to be the persons who published or disseminated the advertisement, but no other person shall be deemed to be such a person.

(6) Any person who has obtained a certificate referred to in subsection (5) (b) shall when so requested by the Registrar forthwith deliver the certificate to the Registrar and if he fails to do so he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding one year and also to a default penalty. ^{15/84.}

(7) Nothing in this section shall limit or diminish any liability which any person may incur under any rule of law or under any provision of this Act apart from this section. [40

As to retention of over-subscriptions in debenture issues.
Aust. s. 41.

49.—(1) A corporation shall not accept or retain subscriptions to a debenture issue in excess of the amount of the issue as disclosed in the prospectus unless the corporation has specified in the prospectus —

- (a) that it expressly reserves the right to accept or retain over-subscriptions; and
- (b) a limit expressed as a specific sum of money on the amount of over-subscriptions that may be accepted or retained being an amount not more than 25% in excess of the amount of the issue as disclosed in the prospectus.

As to statement of asset-backing.

(2) Subject to the provisions of the Fifth Schedule, where a corporation specifies in a prospectus relating to a debenture issue that it reserves the right to accept or retain over-subscriptions —

- (a) the corporation shall not make, authorise or permit any statement of or reference as to the asset-backing for the issue to be made or contained in any prospectus relating to the issue, other than a statement or reference to the total tangible assets and the total liabilities of the corporation and of its guarantor corporations; and
- (b) the prospectus shall contain a statement or reference as to what the total assets and total liabilities of the corporation would be if over-subscriptions to the limit specified in the prospectus were accepted or retained.

15/84.

(3) Every corporation or other person that contravenes or fails to comply with any of the provisions of subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years. [41

Registration of prospectus.
U.K. s. 41.
Aust. s. 42.

50.—(1) A prospectus shall not be issued, circulated or distributed by any person unless a copy thereof has first been registered by the Registrar.

(2) The Registrar shall not register a copy of any prospectus if it contains any statement or matter which is in his opinion misleading in the form and context in which it is included and unless —

- (a) the copy signed by every director and by every person who is named therein as a proposed director of the corporation or by his agent authorised in writing is lodged with the Registrar on or before the date of its issue;
- (b) the prospectus appears to comply with the requirements of this Act; and
- (c) there are also lodged with the Registrar copies verified as prescribed of any consents required by section 54 to the issue of the prospectus and of all material contracts referred to in the prospectus or, in the case of such a contract not reduced into writing, a memorandum giving full particulars thereof verified as prescribed.

(3) If a prospectus is issued without a copy thereof having been so registered, the corporation and every person who is knowingly a party to the issue of the prospectus shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 6 months. 15/84.

(4) Every corporation shall cause a true copy of every document referred to in subsection (2) (c) to be deposited within 7 days after registration of the prospectus at the registered office of the corporation in Singapore and, if it has no registered office in Singapore, at the address in Singapore specified in the prospectus for that purpose and shall keep each such copy, for a period of at least 6 months after the registration of the prospectus, for the inspection of the members and creditors of the corporation without fee.

Copy of contracts, etc., to be kept for inspection at registered office.

[42

51.—(1) This section shall apply only to corporations that are both of a governmental and international character.

Exemption for certain governmental and international corporations as regards the signing of a copy of prospectus by all directors. 15/84.

(2) A corporation to which this section applies may apply in writing to the Registrar for an exemption from the requirements of section 50 (2) (a) and the Registrar may, if he considers those requirements unduly burdensome on the corporation, exempt such corporation from complying therewith subject to the Registrar requiring such minimum

number of directors who are resident in Singapore signing the copy of the prospectus as the Registrar, in any particular case, may decide and, in the event that no directors are resident in Singapore, the Registrar may permit a duly authorised agent to sign the prospectus so long as such authorisation is supported by a resolution of the board of the corporation though the Registrar, if he is satisfied that a particular corporation cannot comply with any of these requirements, may grant the exemption applied for.

(3) Any prospectus that complies with the terms of exemption granted by the Registrar shall be deemed to be a prospectus for the purposes of this Act and a copy of such prospectus shall be registered by the Registrar. [42A

Document
containing
offer of
shares for
sale deemed
prospectus.
U.K. s. 45.
Aust. s. 43.

52.—(1) Where a corporation allots or agrees to allot to any person any shares in or debentures of the corporation with a view to all or any of them being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the corporation, and all written laws and rules of law as to the contents of prospectuses and to liability in respect of statements and non-disclosures in prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly as if the shares or debentures had been offered to the public and as if persons accepting the offer in respect of any shares or debentures were subscribers therefor but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of statements or non-disclosures in the document or otherwise.

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

- (a) that an offer of the shares or debentures or of any of them for sale to the public was made within 6 months after the allotment or agreement to allot; or
- (b) that at the date when the offer was made the whole consideration to be received by the corporation in respect of the shares or debentures had not been so received.

(3) The requirements of this Division as to prospectuses shall have effect as though the persons making an offer to which this section relates were persons named in a prospectus as directors of a corporation.

(4) In addition to complying with the other requirements of this Division the document making the offer shall state —

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

(5) Where an offer to which this section relates is made by a corporation or a firm, it shall be sufficient if the document referred to in subsection (1) is signed on behalf of the corporation or firm by two directors of the corporation or not less than half of the members of the firm, as the case may be, and any such director or member may sign by his agent authorised in writing. [43]

53.—(1) Where a prospectus states or implies that application has been or will be made for permission for the shares or debentures offered thereby to be listed for quotation on the official list of any stock exchange, any allotment made on an application in pursuance of the prospectus shall, subject to subsection (3), whenever made, be void if —

- (a) the permission is not applied for in the form for the time being required by the stock exchange before the third day on which the stock exchange is open after the date of issue of the prospectus; or
- (b) the permission is not granted before the expiration of 6 weeks from the date of the issue of the prospectus or such longer period not exceeding 12 weeks from the date of the issue as is, within those 6 weeks, notified to the applicant by or on behalf of the stock exchange.

Allotment of shares and debentures where prospectus indicates application to list on stock exchange. U.K. s. 51. Aust. s. 44.

(2) Where the permission has not been applied for, or has not been granted as aforesaid, the corporation shall, subject to subsection (3), forthwith repay without interest all money received from applicants in pursuance of the

prospectus, and if any such money is not repaid within 14 days after the corporation so becomes liable to repay it then in addition to the liability of the corporation the directors of the corporation shall be jointly and severally liable to repay that money with interest at the rate of 10% per annum from the expiration of such 14 days.

- (3) Where in relation to any shares or debentures —
- (a) permission is not applied for as specified in subsection (1) (a); or
 - (b) permission is not granted as specified in subsection (1) (b),

the Minister may by notification in the *Gazette* on the application of the corporation, made before any share or debenture is purported to be allotted, exempt the allotment of the shares or debentures from the provisions of this section.

(4) A director shall not be liable under subsection (2) if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

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

(6) Without limiting the application of any of its provisions, this section shall have effect —

- (a) in relation to any shares or debentures agreed to be taken by a person underwriting an offer thereof contained in a prospectus as if he had applied therefor in pursuance of the prospectus; and
- (b) in relation to a prospectus offering shares for sale as if —
 - (i) a reference to sale were substituted for a reference to allotment;
 - (ii) the persons by whom the offer is made, and not the corporation were liable under subsection (2) to repay money received from applicants, and references to the corporation's liability under that subsection were construed accordingly; and
 - (iii) for the reference in subsection (7) to the corporation and every officer of the

corporation who is in default there were substituted a reference to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the default.

(7) All money received as aforesaid shall be kept in a separate bank account so long as the corporation may become liable to repay it under subsection (2); and if default is made in complying with this subsection, the corporation and every officer of the corporation who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding one year. ^{15/84.}

(8) Where the stock exchange has within the time specified in subsection (1) (b) granted permission subject to compliance with any requirements specified by the stock exchange, permission will be deemed to have been granted by the stock exchange if the directors have given to the stock exchange an undertaking in writing to comply with the requirements of the stock exchange, but if any such undertaking is not complied with each director who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding one year. ^{15/84.}

(9) A person shall not issue a prospectus inviting persons to subscribe for shares in or debentures of a corporation if it includes —

- (a) an untrue statement that permission has been granted for those shares or debentures to be dealt in or quoted on any stock exchange; or
- (b) any statement in any way referring to any such permission or to any application or intended application for any such permission, or to dealing in or quoting the shares or debentures on any stock exchange, or to any requirements of a stock exchange unless that statement is or is to the effect that permission has been granted or that application has been or will be made to the stock exchange within 3 days of the issue of the prospectus or the statement has been approved by the Registrar for inclusion in the prospectus.

15/84.

(10) Any person who contravenes or fails to comply with any of the provisions of subsection (9) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding one year.

(11) Where a prospectus contains a statement to the effect that the memorandum and articles of the corporation comply or have been drawn so as to comply with the requirements of any stock exchange, the prospectus shall, unless the contrary intention appears from the prospectus, be deemed for the purposes of this section to imply that application has been, or will be, made for permission for the shares or debentures offered by the prospectus to be listed for quotation on the official list of the stock exchange.

[44

Expert's consent to issue of prospectus containing statement by him.
U.K. s. 40.
Aust. s. 45.

54.—(1) A prospectus inviting subscription for or purchase of shares in or debentures of a corporation and including a statement purporting to be made by an expert or to be based on a statement made by an expert shall not be issued unless —

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

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

15/84.

(2) If any prospectus is issued in contravention of this section the corporation and every person who is knowingly a party to the issue thereof shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding one year.

[45

Civil liability for misstatements in prospectus.
U.K. s. 43.
Aust. s. 46.

55.—(1) Subject to this section, each of the following persons shall be liable to pay compensation to all persons who subscribe for or purchase any shares or debentures on the faith of a prospectus for any loss or damage sustained by reason of any untrue statement therein, or by reason of the wilful non-disclosure therein of any matter of which he had

knowledge and which he knew to be material, that is to say, every person who —

- (a) is a director of the corporation at the time of the issue of the prospectus;
- (b) authorised or caused himself to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;
- (c) is a promoter of the corporation; or
- (d) authorised or caused the issue of the prospectus.

(2) Notwithstanding anything in subsection (1), where the consent of an expert is required to the issue of a prospectus and he has given that consent, he shall not by reason only thereof be liable as a person who has authorised or caused the issue of the prospectus except in respect of an untrue statement purporting to be made by him as an expert, and the inclusion in the prospectus of a name of a person as a trustee for the debenture holders, auditor, banker, solicitor or stock or share broker shall not for that reason alone be construed as an authorisation by such person of the issue of the prospectus.

(3) No person shall be so liable if he proves —

- (a) that, having consented to become a director of the corporation, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent;
- (b) that the prospectus was issued without his knowledge or consent and he gave reasonable public notice thereof forthwith after he became aware of its issue;
- (c) that after the issue of the prospectus and before allotment or sale thereunder he, on becoming aware of any untrue statement therein, withdrew his consent and gave reasonable public notice of the withdrawal and of the reason therefor; or
- (d) that —
 - (i) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable

ground to believe, and did up to the time of the allotment or sale of the shares or debentures believe, that the statement was true;

- (ii) as regards every untrue statement purporting to be a statement made by an expert or to be based on a statement made by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe that the person making the statement was competent to make it and that that person had given the consent required by section 54 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration, or, to that person's knowledge, before any allotment or sale thereunder; and
- (iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document.

(4) Subsection (3) shall not apply in the case of a person liable, by reason of his having given a consent required of him by section 54, as a person who has authorised or caused the issue of the prospectus in respect of an untrue statement purporting to have been made by him as an expert.

(5) A person who apart from this subsection would under subsection (1) be liable, by reason of his having given a consent required of him by section 54, as a person who has authorised the issue of a prospectus in respect of an untrue

statement purporting to be made by him as an expert shall not be so liable if he proves —

- (a) that, having given his consent under section 54 to the issue of the prospectus, he withdrew it in writing before a copy of the prospectus was lodged with the Registrar;
- (b) that, after a copy of the prospectus was lodged with the Registrar and before allotment or sale thereunder, he, on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reasons therefor; or
- (c) that he was competent to make the statement and that he had reasonable ground to believe and did up to the time of the allotment or sale of the shares or debentures believe that the statement was true.

(6) Where —

- (a) the prospectus contains the name of a person as a director of the corporation, or as having agreed to become a director, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue thereof; or
- (b) the consent of a person is required under section 54 to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus,

the directors of the corporation except any without whose knowledge or consent the prospectus was issued, and any other person who authorised or caused the issue thereof shall be liable to indemnify the person so named or whose consent was so required against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him as an expert, or in defending himself against any action or legal proceeding brought against him in respect thereof.

Criminal liability for untrue statement in prospectus. U.K. s. 44. Aust. s. 47. 15/84.

56.—(1) Where in a prospectus there is any untrue statement or wilful non-disclosure any person who authorised or caused the issue of the prospectus shall unless he proves either that the statement or non-disclosure was immaterial or that he had reasonable ground to believe and did, up to the time of the issue of the prospectus, believe the statement was true or the non-disclosure immaterial be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) A person shall not be deemed to have authorised or caused the issue of a prospectus by reason only of his having given the consent required by this Division to the inclusion therein of a statement purporting to be made by him as an expert. [47]

Division 2 — Restrictions on allotment and commencement of business

Prohibition of allotment unless minimum subscription received. U.K. ss. 47, 49. Aust. s. 48.

57.—(1) No allotment shall be made of any shares of a company offered to the public unless —

(a) the minimum subscription has been subscribed; and

(b) the sum payable on application for the shares so subscribed has been received by the company,

but if a cheque for the sum payable has been received by the company, the sum shall be deemed not to have been received by the company until the cheque is paid by the bank on which it is drawn.

(2) The minimum subscription shall be —

(a) calculated on the nominal value of each share, and where the shares are issued at a premium, on the nominal value of, and the amount of the premium payable on, each share; and

(b) reckoned exclusively of any amount payable otherwise than in cash.

(3) The amount payable on application on each share offered to the public shall not be less than 5% of the nominal amount of the share.

(4) If the conditions referred to in subsection (1) (a) and (b) have not been satisfied on the expiration of 4 months

after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within 5 months after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of 10% per annum from the expiration of the period of 5 months but a director shall not be so liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(5) An allotment made by a company to an applicant in contravention of this section or section 59 (1) shall be voidable at the option of the applicant which option may be exercised by written notice served on the company within one month after the holding of the statutory meeting of the company and not later, or, in any case where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting within one month after the date of the allotment, and not later, and the allotment shall be so voidable notwithstanding that the company is in course of being wound up.

(6) Every director of a company who knowingly contravenes or permits or authorises the contravention of any of the provisions of this section or section 59 (1) shall be guilty of an offence and shall be liable in addition to the penalty or punishment for the offence to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee has sustained or incurred thereby but no proceedings for the recovery of any such compensation shall be commenced after the expiration of two years from the date of the allotment.

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

(8) No company shall allot, and no officer or promoter of a company or a proposed company shall authorise or permit to be allotted, shares or debentures to the public on the basis of a prospectus after the expiration of 6 months from the issue of the prospectus.

(9) If default is made in complying with subsection (8) ^{15/84.} the company and every officer or promoter of the company or proposed company shall be guilty of an offence and shall

be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding one year.

(10) Where an allotment of shares or debentures is made on the basis of a prospectus after the expiration of 6 months from the issue of the prospectus, such allotment shall not, by reason only of that fact, be voidable or void. [48

Application
and moneys
to be held in
trust until
allotment.
Aust. s. 49.

58.—(1) All applications and other moneys paid prior to allotment by any applicant on account of shares or debentures offered to the public shall until the allotment of such shares or debentures be held by the company, or in the case of an intended company by the persons named in the prospectus as proposed directors and by the promoters, upon trust for the applicant, but there shall be no obligation or duty on any bank or third person with whom any such moneys have been deposited to inquire into or see to the proper application of such moneys so long as such bank or person acts in good faith.

15/84.

(2) If default is made in complying with this section, every officer of the company in default or, in the case of an intended company, every person named in the prospectus as a proposed director and every promoter who knowingly and wilfully authorises or permits the default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding one year. [49

Restriction
on allotment
in certain
cases.
U.K. s. 48.
Aust. s. 50.

59.—(1) A public company having a share capital which does not issue a prospectus on or with reference to its formation shall not allot any of its shares or debentures unless at least 3 days before the first allotment of either shares or debentures there has been lodged with the Registrar a statement in lieu of prospectus which complies with the requirements of this Act.

15/84.

(2) If default is made in complying with this section the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding one year. [50

60.—(1) To comply with the requirements of this Act a statement in lieu of prospectus lodged by or on behalf of a company —

Requirements as to statements in lieu of prospectus.
U.K. s. 48.
Aust. s. 51.

- (a) shall be signed by every person who is named therein as a director or a proposed director of the company or by his agent authorised in writing;
- (b) shall, subject to the provisions in Part III of the Sixth Schedule, be in the form of and state the matters specified in Part I of that Schedule and set out the reports specified in Part II of that Schedule; and
- (c) shall, where the persons making any report specified in Part II of that Schedule have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 5 of Part III of that Schedule, have endorsed thereon or attached thereto a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(2) The Registrar shall not accept for registration any statement in lieu of prospectus unless it appears to him to comply with the requirements of this Act.

(3) Where in any statement in lieu of prospectus there is any untrue statement or wilful non-disclosure any director who signed the statement in lieu of prospectus shall unless he proves either that the untrue statement or non-disclosure was immaterial or that he had reasonable ground to believe and did up to the time of the delivery for registration of the statement in lieu of prospectus believe that the untrue statement was true or the non-disclosure immaterial, be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding one year or to both. [51

15/84.

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

Restrictions on commencement of business in certain circumstances.
U.K. s. 109.
Aust. s. 52.

- (a) if any money is or may become liable to be repaid to applicants for any shares or debentures

offered for public subscription by reason of any failure to apply for or obtain permission for listing for quotation on any stock exchange; or

(b) unless —

- (i) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription;
- (ii) every director has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; and
- (iii) there has been lodged with the Registrar a statutory declaration by the secretary or one of the directors of the company in the prescribed form verifying that the above conditions have been complied with.

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

- (a) there has been lodged with the Registrar a statement in lieu of prospectus which complies with the provisions of this Act;
- (b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash; and
- (c) there has been lodged with the Registrar a statutory declaration by the secretary or one of the directors of the company in the prescribed form verifying that paragraph (b) has been complied with.

(3) The Registrar shall on the lodging of the statutory declaration in accordance with this section certify that the

company is entitled to commence business and to exercise its borrowing powers and that certificate shall be conclusive evidence thereof.

(4) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only and shall not be binding on the company until that date, and on that date it shall become binding.

(5) Where shares and debentures are offered simultaneously by a company for subscription, nothing in this section shall prevent the receipt by the company of any money payable on application for the debentures.

(6) If any company commences business or exercises borrowing powers in contravention of this section every person who is responsible for the contravention shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$4,000 and to a default penalty of \$250. [52 15/84.

62. A company shall not before the statutory meeting vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, unless the variation is made subject to the approval of the statutory meeting. [53
Restriction on varying contracts referred to in prospectus, etc.
 U.K. s. 42.
 Aust. s. 53.

Division 3 — Shares

63.—(1) Where a company makes any allotment of its shares or any of its shares are deemed to have been allotted under subsection (7) the company shall within one month thereafter lodge with the Registrar a return of the allotments stating —
Return as to allotments.
 U.K. s. 52.
 Aust. s. 54.
 15/84.

- (a) the number and nominal amounts of the shares comprised in the allotment;
- (b) the amount, if any, paid, deemed to be paid, or due and payable on the allotment of each share;
- (c) where the capital of the company is divided into shares of different classes the class of shares to which each share comprised in the allotment belongs; and
- (d) the full name, identification, nationality (if such identification and nationality are required by the Registrar) and the address of each of the

allottees and the number and class of shares allotted to him.

15/84.

(2) In subsection (1), “identification” means in the case of a person issued with an identity card, the number of his identity card and, in the case of a person not issued with an identity card, particulars of his passport or such other similar evidence of identification as is available.

(3) The particulars mentioned in subsection (1) (d) need not be included in the return where a company to which section 198 (1) applies has allotted shares —

(a) for cash; or

(b) for a consideration other than cash and the number of persons to whom the shares have been allotted exceeds 500.

(4) Where shares are allotted or deemed to have been allotted as fully or partly paid up otherwise than in cash and the allotment is made pursuant to a contract in writing the company shall lodge with the return the contract evidencing the entitlement of the allottee or a copy of any such contract certified as prescribed.

(5) If a certified copy of a contract is lodged the original contract duly stamped shall if the Registrar so requests be produced at the same time to the Registrar.

(6) Where shares are allotted or are deemed to have been allotted as fully or partly paid up otherwise than in cash and the allotment is made —

(a) pursuant to a contract not reduced to writing;

(b) pursuant to a provision in the memorandum or articles; or

(c) in satisfaction of a dividend declared in favour of, but not payable in cash to, the shareholders, or in pursuance of the application of moneys held by the company in an account or reserve in paying up unissued shares to which the shareholders have become entitled,

the company shall lodge with the return a statement containing such particulars as are prescribed but, where the shares are allotted pursuant to a scheme of arrangement approved by the Court under section 210, the company may lodge an office copy of the order of the Court in lieu of the statement in the prescribed form.

(7) For the purposes of this section, any shares issued without formal allotment to subscribers to the memorandum shall be deemed to have been allotted to such subscribers on the date of the incorporation of the company.

(8) If default is made in complying with this section, every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$4,000 and to a default penalty of \$250. [54 15/84.

64.—(1) Notwithstanding any provision in this Act or in the memorandum or articles of a company to which this section applies, but subject to section 180 (1), each equity share issued by such a company after the commencement of this Act shall confer the right at a poll at any general meeting of the company to one vote, and to one vote only, in respect of each equity share. As to voting rights of equity shares in certain companies. 15/84.

(2) Where any company to which this section applies has, prior to the commencement of this Act, or, while it was a company to which this section did not apply, issued any equity share which does not comply with subsection (1), the company shall not issue any invitation to subscribe for or to purchase any shares or debentures of such company until the voting rights attached to each share of that company have been duly varied so as to comply with subsection (1).

(3) For the purposes of this section, any alteration of the rights of issued preference shares so that they become equity shares shall be deemed to be an issue of equity shares.

(4) The Minister may, by order published in the *Gazette*, declare that subsection (1) shall apply to all or any equity shares or any class of equity shares which have been issued before the commencement of this Act by a company to which this section applies and which is specified in the declaration and thereupon that subsection shall apply to such equity shares so issued by such company from such date as is specified in the declaration being a date not less than one year after the making of the declaration.

(5) This section shall apply to —

- (a) a public company having a share capital; and
- (b) a subsidiary of such a public company.

15/84.

(6) Any person who makes any invitation to the public in breach of subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years. [55

Differences
in calls and
payments,
etc.
U.K. s. 59.
Aust. ss. 55,
56.

65.—(1) A company if so authorised by its articles may —

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

Reserve
liability.
Aust. s. 56.

(2) A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up, but no such resolution shall prejudice the rights of any person acquired before the passing of the resolution. [56

Share
warrants.
Aust. s. 57.

66.—(1) A company shall not issue any share warrant.

(2) The bearer of a share warrant issued before the commencement of this Act shall be entitled, on surrendering it for cancellation, to have his name entered in the register of members.

(3) The company shall be responsible for any loss incurred by any person by reason of the company entering in the register the name of a bearer of a share warrant issued before the commencement of this Act in respect of the shares therein specified without the warrant being surrendered and cancelled. [57

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

Power to pay certain commissions, and prohibition of payment of all other commissions, discounts, etc.
U.K. s. 53.
Aust. s. 58.

- (a) the payment is authorised by the articles;
- (b) the commission does not exceed 10% of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is the less;
- (c) the amount or rate of the commission is —
 - (i) in the case of shares offered to the public for subscription, disclosed in the prospectus; and
 - (ii) in the case of shares not so offered, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and lodged before the payment of the commission with the Registrar, and, where a circular or notice not being a prospectus inviting subscription for the shares is issued, also disclosed in that circular or notice; and
- (d) the number of shares which persons have agreed for a commission to subscribe absolutely is disclosed in like manner.

(2) Except as provided in subsection (1), no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for any shares or procuring or agreeing to procure subscriptions whether absolute or conditional for any shares in the company, whether the shares or money are so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money is paid out of the nominal purchase money or contract price or otherwise.

(3) Nothing in this section shall affect the power of any company to pay such brokerage (in addition to or in lieu of the commission referred to in subsection (1)) as it has hitherto been lawful for a company to pay but the amount or rate per cent of the brokerage paid or agreed to be paid by the company shall (in the case of shares offered to the public for subscription) be disclosed in the prospectus or (in the case of shares not offered to the public for subscription) be disclosed in the statement in lieu of prospectus or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and lodged before the payment of the brokerage with the Registrar, and, where a circular or notice not being a prospectus inviting subscription for the shares is issued, also disclosed in that circular or notice.

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

15/84.

(5) If default is made in complying with this section relating to the lodging with the Registrar of the statement in the prescribed form, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty. [58

Power to
issue shares
at a discount.
U.K. s. 57.
Aust. s. 59.

68.—(1) Subject to this section, a company may issue shares at a discount of a class already issued if —

- (a) the issue of the shares at a discount is authorised by resolution passed in general meeting of the company and is confirmed by order of the Court;
- (b) the resolution specifies the maximum rate of discount at which the shares are to be issued;
- (c) at the date of the issue not less than one year has elapsed since the date on which the company was entitled to commence business; and
- (d) the shares are issued within one month after the date on which the issue is confirmed by order of the Court or within such extended time as the Court allows.

(2) The Court, if having regard to all the circumstances of the case it thinks proper to do so, may make an order confirming the issue on such terms and conditions as it thinks fit.

(3) Every prospectus relating to the issue of the shares shall contain particulars of the discount allowed or of so much of that discount as has not been written off at the date of the issue of the prospectus.

(4) Notwithstanding any provision of its articles, a company shall not issue at a discount shares of any class unless it first offers the shares to every holder of shares of that class in the company proportionately to the number of those shares held by such holder.

(5) Every such offer shall be made by notice specifying the number of shares to which the member is entitled and limiting a time not being less than 21 days within which the offer may be accepted.

(6) If any such offer is not accepted within the time limited by the notice the shares may be issued on terms not more favourable than those offered to the shareholders.

(7) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty. 15/84.

[59

69.—(1) Where a company issues shares for which a premium is received by the company whether in cash or in the form of other valuable consideration a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account called the “share premium account”, and the provisions of this Act relating to the reduction of the share capital of a company shall subject to this section apply as if the share premium account were paid-up share capital of the company. Issue of shares at premium.
U.K. s. 56.
Aust. s. 60.

- (2) The share premium account may be applied —
- (a) in paying up unissued shares to be issued to members of the company as fully paid bonus shares;
 - (b) in paying up in whole or in part the balance unpaid on shares previously issued to members of the company;

- (c) in the payment of dividends if such dividends are satisfied by the issue of shares to members of the company;
- (d) in the case of a company which carries on insurance business in Singapore by appropriation or transfer to any statutory fund established and maintained pursuant to any law of Singapore relating to insurance;
- (e) in writing off —
 - (i) the preliminary expenses of the company; or
 - (ii) the expenses of, or the commission or brokerage paid or discount allowed on, any duty, fee or tax payable on or in connection with, any issue of shares of the company; or
- (f) in providing for the premium payable on redemption of redeemable preference shares. [60

Redeemable
preference
shares.
U.K. s. 58.
Aust. s. 61.

70.—(1) Subject to this section, a company having a share capital 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 and the redemption shall be effected only on such terms and in such manner as is provided by the articles.

(2) The redemption shall not be taken as reducing the amount of authorised share capital of the company.

(3) The shares shall not be redeemed —

(a) except out of profits which would otherwise be available for dividend, or out of the proceeds of a fresh issue of shares made for the purposes of the redemption; and

(b) unless they are fully paid up.

(4) The premium, if any, payable on redemption shall be provided for out of profits or the share premium account before the shares are redeemed.

(5) Where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall out of profits which would otherwise have been available for dividend be transferred to a reserve called the “capital redemption

reserve” a sum equal to the nominal amount of the shares redeemed, and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve were paid-up share capital of the company.

(6) Where in pursuance of this section a company has redeemed or is about to redeem any preference shares, it may 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 fee under this Act, be deemed to be increased by such issue but where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to any fee under this Act, be deemed to have been issued in pursuance of this subsection unless the old shares have been redeemed within one month after the issue of the new shares.

(7) The capital redemption reserve may be applied in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

(8) If a company redeems any redeemable preference shares it shall within 14 days after so doing give notice thereof to the Registrar specifying the shares redeemed.

[61

71.—(1) A company, if so authorised by its articles, may in general meeting alter the conditions of its memorandum in any one or more of the following ways:

- (a) increase its share capital by the creation 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

Power of company to alter its share capital.

U.K. ss. 61, 64.

Aust. s. 62.

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 or which have been forfeited and diminish the amount of its share capital by the amount of the shares so cancelled.

Cancellations.

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

As to share capital of unlimited company on re-registration.

(3) An unlimited company having a share capital may by any resolution passed for the purposes of section 30 (1) —

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

Notice of increase of share capital.

(4) Where a company has increased its share capital beyond the registered capital, it shall within one month after the passing of the resolution authorising the increase lodge with the Registrar notice of the increase.

15/84.

(5) If any company fails to comply with subsection (4) the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

[62

Validation of shares improperly issued.
Aust. s. 63.

72. Where a company has purported to issue or allot shares and the creation, issue or allotment of those shares was invalid by reason of any provision of this or any other written law or of the memorandum or articles of the company or otherwise or the terms of issue or allotment were inconsistent with or unauthorised by any such provision the Court may upon application made by the

company or by a holder or mortgagee of any of those shares or by a creditor of the company and upon being satisfied that in all the circumstances it is just and equitable to do so make an order validating the issue or allotment of those shares or confirming the terms of issue or allotment thereof or both and upon an office copy of the order being lodged with the Registrar those shares shall be deemed to have been validly issued or allotted upon the terms of the issue or allotment thereof. [63

73.—(1) Subject to confirmation by the Court, a company may, if so authorised by its articles by special resolution, reduce its share capital in any way and in particular, without limiting the generality of the foregoing, may do all or any of the following:

Special resolution for reduction of share capital. U.K. ss. 66–71. Aust. s. 64.

- (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up;
- (b) cancel any paid-up capital which is lost or unrepresented by available assets;
- (c) pay off any paid-up share capital which is in excess of the needs of the company,

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

(2) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the Court so directs —

- (a) every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company shall be entitled to object to the reduction;
- (b) the Court, unless satisfied on affidavit that there are no such creditors, shall settle a list of creditors so entitled to object and for that purpose shall ascertain as far as possible without requiring an application from any creditor the names of those creditors and the nature and amount of their debts or claims, and may

publish notices fixing a final day on or before which creditors not entered on the list may claim to be so entered; and

(c) where a creditor entered on the list whose debt or claim is not discharged or has not been determined does not consent to the reduction, the Court may dispense with the consent of that creditor on the company securing payment of his debt or claim by appropriating as the Court directs —

(i) if the company admits the full amount of the debt or claim or though not admitting it is willing to provide for it, the full amount of the debt or claim; or

(ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim or if the amount is contingent or not ascertained, an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up by the Court.

(3) Notwithstanding subsection (2), the Court may, having regard to any special circumstances of any case, direct that all or any of the provisions of that subsection shall not apply as regards any class of creditors.

(4) The Court, if satisfied with respect to every creditor who under subsection (2) is entitled to object, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has been determined or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

(5) An order made under subsection (4) shall show the amount of the share capital of the company as altered by the order, 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 order deemed to be paid up on each share.

(6) On the lodging of an office copy of the order with the Registrar the resolution for reducing share capital as confirmed by the order so lodged shall take effect.

(7) The certificate of the Registrar shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with and that the share capital of the company is such as is stated in the order.

(8) On the lodging of the copy of the order the particulars shown in the order pursuant to subsection (5) shall be deemed to be substituted for the corresponding particulars in the memorandum and such substitution and any addition ordered by the Court to be made to the name of the company shall (in the case of any addition to the name, for such period as is specified in the order of the Court) be deemed to be alterations of the memorandum for the purposes of this Act.

(9) A member, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference, if any, between the amount of the share as fixed by the order and the amount paid, or the reduced amount, if any, which is to be deemed to have been paid, on the share, as the case may be, but where any creditor entitled to object to the reduction is, by reason of his ignorance of the proceedings for reduction or of their nature and effect with respect to his claim, not entered on the list of creditors, and after the reduction the company is unable, within the meaning of the provisions of this Act with respect to winding up by the Court, to pay the amount of his debt or claim —

- (a) every person who was a member of the company at the date of the lodging of the copy of the order for reduction 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 date; and
- (b) if the company is wound up the Court, on the application of any such creditor and proof of his ignorance of the proceedings for reduction or of their nature and effect with respect to his claim 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, but nothing in this subsection shall affect the rights of the contributories among themselves.

15/84.

(10) Every officer of the company who —

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

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 3 years.

(11) This section shall not apply to an unlimited company, but nothing in this Act shall preclude an unlimited company from reducing in any way its share capital, including any amount in its share premium account.

[64

Rights of holders of classes of shares.
U.K. s. 72.
Aust. s. 65.
10/74.

74.—(1) If, in the case of a company the share capital of which is divided into different classes of shares, provision is made by the memorandum or articles for authorising the variation or abrogation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of that provision the rights attached to any such class of shares are at any time varied or abrogated the holders of not less in the aggregate than 5% of the issued shares of that class may apply to the Court to have the variation or abrogation cancelled, and, if any such application is made, the variation or abrogation shall not have effect until confirmed by the Court.

(2) An application shall not be invalid by reason of the applicants or any of them having consented to or voted in favour of the resolution for the variation or abrogation if the Court is satisfied that any material fact was not disclosed by the company to those applicants before they so consented or voted.

(3) The application shall be made within one month after the date on which the consent was given or the resolution was passed or such further time as the Court allows, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they appoint in writing.

(4) On the 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, may, if satisfied having regard to all the circumstances of the case that the variation or abrogation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation or abrogation, as the case may be, and shall, if not so satisfied, confirm it and the decision of the Court shall be final.

(5) The company shall, within 14 days after the making of an order by the Court on any such application, lodge an office copy of the order with the Registrar and if default is made in complying with this provision the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty. ^{15/84.}

(6) The issue by a company of preference shares ranking *pari passu* with existing preference shares issued by the company shall be deemed to be a variation of the rights attached to those existing preference shares unless the issue of the first-mentioned shares was authorised by the terms of issue of the existing preference shares or by the articles of the company in force at the time the existing preference shares were issued.

(7) For the purposes of this section, the alteration of any provision in the memorandum or articles of a company which affects or relates to the manner in which the rights attaching to the shares of any class may be varied or abrogated shall be deemed to be a variation or abrogation of the rights attached to the shares of that class.

(8) This section shall not operate so as to limit or derogate from the rights of any person to obtain relief under section 216.

Rights of holders of preference shares to be set out in memorandum or articles.
Aust. s. 66.

75.—(1) No company shall allot any preference shares or convert any issued shares into preference shares unless there are set out in its memorandum or articles the rights of the holders of those shares with respect to repayment of capital, participation in surplus assets and profits, cumulative or non-cumulative dividends, voting and priority of payment of capital and dividend in relation to other shares or other classes of preference shares.

15/84.

(2) If default is made in complying with this section the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000. [66

Dealing by a company in its own shares, etc.
U.K. s. 54.
Aust. s. 67.

76.—(1) Except as is otherwise expressly provided by this Act, no company shall give, whether directly or indirectly and whether by means of a loan guarantee or the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the company or, where the company is a subsidiary, in its holding company or in any way purchase, deal in or lend money on its own shares.

10/74
15/84.

(2) Nothing in subsection (1) shall prohibit —

- (a)** where the lending of money is part of the ordinary business of a company, the lending of money by the company in the ordinary course of its business if the activities of that company are regulated by any written law relating to banking, finance companies or insurance or are subject to supervision by the Monetary Authority of Singapore;
- (b)** the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of or subscription for fully-paid shares in the company or its holding company, being a purchase or subscription by trustees of or for shares to be held by or for the benefit of employees of the company or a subsidiary of the company, including any director holding a salaried employment or office in the company or a subsidiary of the company; or
- (c)** the giving of financial assistance by a company to persons, other than directors, bona fide in the

employment of the company or of a subsidiary of the company with a view to enabling those persons to purchase fully-paid shares in the company or its holding company to be held by themselves by way of beneficial ownership.

(3) If there is any contravention of this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding one year and any transfer or allotment of shares pursuant to a purchase or dealing prohibited by subsection (1) shall be void. 10/74
15/84.

(4) Nothing in this section shall operate to prevent the company from recovering the amount of any loan made in contravention of this section or any amount for which it becomes liable on account of any financial assistance given in contravention of this section. [67

77.—(1) An option granted after the commencement of this Act by a public company which enables any person to take up unissued shares of the company after a period of 5 years has elapsed from the date on which the option was granted shall be void. Options over unissued shares. Aust. s. 68.

(2) Subsection (1) shall not apply in any case where the holders of debentures have an option to take up shares of the company by way of redemption of the debentures. [68

78. Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a long period, the company may pay interest on so much of such share capital as is for the time being paid up and charge the interest so paid to capital as part of the cost of the construction or provision but — Power of company to pay interest out of capital in certain cases. U.K. s. 65. Aust. s. 69.

- (a) no such payment shall be made unless it is authorised, by the articles or by special resolution, and is approved by the Court;
- (b) before approving of any such payment, the Court may at the expense of the company appoint a person to inquire and report as to the circumstances of the case, and may require the

company to give security for the payment of the costs of the inquiry;

- (c) the payment shall be made only for such period as is determined by the Court, but in no case extending beyond a period of 12 months after the works or buildings have been actually completed or the plant provided;
- (d) the rate of interest shall in no case exceed 5% per annum or such other rate as is for the time being prescribed; and
- (e) the payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid. [69

Division 4 — Substantial shareholdings

Application
and interpretation
of
Division.

79.—(1) This section shall have effect for the purposes of this Division but shall not prejudice the operation of any other provision of this Act.

62/70
49/73.

(2) A reference to a company is a reference —

- (a) to a company all or any of the shares in which are listed for quotation on the official list of a stock exchange as defined in the Securities Industry Act;
- (b) to a body corporate, being a body incorporated in Singapore, that is for the time being declared by the Minister, by notification in the *Gazette*, to be a company for the purposes of this Division; or
- (c) to a body, not being a body corporate formed in Singapore, that is for the time being declared by the Minister, by notification in the *Gazette*, to be a company for the purposes of this Division.

Cap. 289.

(3) In relation to a company the whole or a portion of the share capital of which consists of stock, an interest of a person in any such stock shall be deemed to be an interest in an issued share in the company having the same nominal amount as the amount of that stock and having attached to it the same rights as are attached to that stock.

(4) A reference in the definition of “voting share” in section 4 (1) to a body corporate includes a reference to a body referred to in subsection (2) (c). [69A

80.—(1) The obligation to comply with this Division extends to all natural persons, whether resident in Singapore or not and whether citizens of Singapore or not, and to all bodies corporate, whether incorporated or carrying on business in Singapore or not.

Persons obliged to comply with Division. 62/70.

(2) This Division extends to acts done or omitted to be done outside Singapore. [69B

81.—(1) For the purposes of this Division, a person has a substantial shareholding in a company if he has an interest or interests in one or more voting shares in the company and the nominal amount of that share, or the aggregate of the nominal amounts of those shares, is not less than 5% of the aggregate of the nominal amount of all the voting shares in the company.

Substantial shareholdings and substantial shareholders. 62/70 10/74.

(2) For the purposes of this Division, a person has a substantial shareholding in a company, being a company the share capital of which is divided into two or more classes of shares, if he has an interest or interests in one or more voting shares included in one of those classes and the nominal amount of that share, or the aggregate of the nominal amounts of those shares, is not less than 5% of the nominal amount of all the voting shares included in that class.

10/74.

(3) For the purposes of this Division, a person who has a substantial shareholding in a company is a substantial shareholder in that company.

(4) Every person who, at the time this subsection comes into operation —

10/74.

(a) has an interest or interests in one or more voting shares in a company; or

(b) in the case of a company the share capital of which is divided into two or more classes of shares, has an interest or interests in one or more voting shares included in one of those classes,

and the nominal value of that share or the aggregate of the nominal amount of those shares is equal to 5% or more but less than 10% of the aggregate of the nominal amount of all the voting shares in the company has a substantial shareholding in the company and is a substantial shareholder of that company and shall be under an obligation to give notice

in writing to the company stating full particulars of the voting shares in the company in which he has an interest or interests and the full particulars of each such interest and of the circumstances by reason of which he has that interest.

10/74.

(5) This Division shall apply to a substantial shareholder under subsection (4). [69C

Substantial shareholder to notify company of his interests. 62/70 49/73.

82.—(1) A person who is a substantial shareholder in a company shall give notice in writing to the company stating his name and address and full particulars (including unless the interest or interests cannot be related to a particular share or shares the name of the person who is registered as the holder) of the voting shares in the company in which he has an interest or interests and full particulars of each such interest and of the circumstances by reason of which he has that interest.

(2) The notice shall be given —

S 249/71.

(a) if the person was a substantial shareholder on 1st October 1971 — within one month after that date; or

(b) if the person became a substantial shareholder after that date — within 7 days after becoming a substantial shareholder.

(3) The notice shall be so given notwithstanding that the person has ceased to be a substantial shareholder before the expiration of whichever period referred to in subsection (2) is applicable. [69D

Substantial shareholder to notify company of change in his interests. 62/70 10/74.

83.—(1) Where there is a change in the interest or interests of a substantial shareholder in a company in voting shares in the company, he shall give notice in writing to the company stating his name and full particulars of the change, including the date of the change and the circumstances by reason of which that change has occurred.

(2) The notice shall be given within 7 days after the date of the change.

(3) For the purposes of subsection (1) where a substantial shareholder in a company acquires or disposes of voting shares in the company there shall be deemed to be a change in the interest or interests of the substantial shareholder in the voting shares in that company. [69E

84.—(1) A person who ceases to be a substantial shareholder in a company shall give notice in writing to the company stating his name and the date on which he ceased to be a substantial shareholder and full particulars of the circumstances by reason of which he ceased to be a substantial shareholder.

Person who ceases to be substantial shareholder to notify company.
62/70
10/74.

(2) The notice shall be given within 7 days after the person ceased to be a substantial shareholder. [69F

85. The circumstances required to be stated in the notice under section 82, 83 or 84 include circumstances by reason of which, having regard to section 7 —

References to operation of section 7.
62/70.

- (a) a person has an interest in voting shares;
- (b) a change has occurred in an interest in voting shares; or
- (c) a person has ceased to be a substantial shareholder in a company,

respectively. [69G

86.—(1) A person who holds voting shares in a company, being voting shares in which a non-resident has an interest, shall give to the non-resident a notice in the prescribed form as to the requirements of this Division.

Persons holding shares as trustees.
62/70
49/73.

(2) The notice shall be given —

- (a) if the first-mentioned person holds the shares on 1st October 1971 — within 14 days after that date; or
- (b) if the first-mentioned person did not hold the shares on that date — within 7 days after becoming the holder of the shares.

S 249/71.

(3) In this section, “non-resident” means a person who is not resident in Singapore or a body corporate that is not incorporated in Singapore.

(4) Nothing in this section affects the operation of section 80. [69H

87. The Registrar may, on the application of a person who is required to give a notice under this Division, in his discretion, extend, or further extend, the time for giving the notice.

Registrar may extend time for giving notice under this Division.
[69I

Company to keep register of substantial shareholders. 62/70 49/73 15/84.

88.—(1) A company shall keep a register in which it shall forthwith enter —

- (a) in alphabetical order the names of persons from whom it has received a notice under section 82; and
- (b) against each name so entered, the information given in the notice and, where it receives a notice under section 83 or 84, the information given in that notice.

(2) The register shall be kept at the registered office of the company, or, if the company does not have a registered office, at the principal place of business of the company in Singapore and shall be open for inspection by a member of the company without charge and by any other person on payment for each inspection of a sum of \$2 or such lesser sum as the company requires.

(3) A person may request the company to furnish him with a copy of the register or any part of the register on payment in advance of a sum of \$1 or such lesser sum as the company requires for every page or part thereof required to be copied and the company shall send the copy to that person, within 14 days or such longer period as the Registrar thinks fit, after the day on which the request is received by the company.

49/73.

(4) The Registrar may at any time in writing require the company to furnish him with a copy of the register or any part of the register and the company shall furnish the copy within 7 days after the day on which the requirement is received by the company.

15/84.

(5) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 and in the case of a continuing offence to a further fine of \$500 for every day during which the offence continues after conviction.

(6) A company is not, by reason of anything done under this Division —

- (a) to be taken for any purpose to have notice of; or
- (b) to be put upon inquiry as to,

a right of a person to or in relation to a share in the company.

89. A person who fails to comply with section 82, 83, 84 or 86 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 and in the case of a continuing offence to a further fine of \$500 for every day during which the offence continues after conviction. [69K

Offences against certain sections. 62/70 15/84.

90.—(1) It is a defence to a prosecution for failing to comply with section 82, 83, 84 or 86 if the defendant proves that his failure was due to his not being aware of a fact or occurrence the existence of which was necessary to constitute the offence and that —

Defence to prosecutions. 62/70 15/84.

- (a) he was not so aware on the date of the summons; or
- (b) he became so aware less than 7 days before the date of the summons.

(2) For the purposes of subsection (1), a person shall conclusively be presumed to have been aware of a fact or occurrence at a particular time —

- (a) of which he would, if he had acted with reasonable diligence in the conduct of his affairs, have been aware at that time; or
- (b) of which a servant or agent of the person, being a servant or agent having duties or acting in relation to his master's or principal's interest or interests in a share or shares in the company concerned, was aware or would, if he had acted with reasonable diligence in the conduct of his master's or principal's affairs, have been aware at that time. [69L

91.—(1) Where a person is a substantial shareholder, or at any time after 1st October 1971 has been a substantial shareholder in a company and has failed to comply with section 82, 83 or 84, the Court may, on the application of the Minister, whether or not that failure still continues, make one or more of the following orders:

Powers of court with respect to defaulting substantial shareholders. 62/70 S 249/71.

- (a) an order restraining the substantial shareholder from disposing of any interest in shares in the company in which he is or has been a substantial shareholder;
- (b) an order restraining a person who is, or is entitled to be registered as, the holder of shares referred to in paragraph (a) from disposing of any interest in those shares;

- (c) an order restraining the exercise of any voting or other rights attached to any share in the company in which the substantial shareholder has or has had an interest;
- (d) an order directing the company not to make payment, or to defer making payment, of any sum due from the company in respect of any share in which the substantial shareholder has or has had an interest;
- (e) an order directing the sale of all or any of the shares in the company in which the substantial shareholder has or has had an interest;
- (f) an order directing the company not to register the transfer or transmission of specified shares;
- (g) an order that any exercise of the voting or other rights attached to specified shares in the company in which the substantial shareholder has or has had an interest be disregarded;
- (h) for the purposes of securing compliance with any other order made under this section, an order directing the company or any other person to do or refrain from doing a specified act.

(2) Any order made under this section may include such ancillary or consequential provisions as the Court thinks just.

(3) An order made under this section directing the sale of a share may provide that the sale shall be made within such time and subject to such conditions, if any, as the Court thinks fit, including, if the Court thinks fit, a condition that the sale shall not be made to a person who is, or, as a result of the sale, would become a substantial shareholder in the company.

(4) The Court may direct that, where a share is not sold in accordance with an order of the Court under this section, the share shall vest in the Registrar.

(5) The Court shall, before making an order under this section and in determining the terms of such an order, satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice any person.

(6) The Court shall not make an order under this section, other than an order restraining the exercise of voting rights, if it is satisfied —

- (a) that the failure of the substantial shareholder to comply as mentioned in subsection (1) was due to his inadvertence or mistake or to his not being aware of a relevant fact or occurrence; and
- (b) that in all the circumstances, the failure ought to be excused.

(7) The Court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

(8) The Court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

(9) Section 347 applies in relation to a share that vests in the Registrar under this section as the first-mentioned section applies in relation to an estate or interest in property vested in the Official Receiver under the first-mentioned section.

(10) Any person who contravenes or fails to comply with an order made under this section that is applicable to him shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 and in the case of a continuing offence to a further fine of \$500 for every day during which the offence continues after conviction.

(11) Subsection (10) does not affect the powers of the Court in relation to the punishment of contempt of the Court.

[69M

92.—(1) Any company all of the shares in which are listed for quotation on the official list of a stock exchange (as defined in the Securities Industry Act) may by notice in writing require any member of the company within such reasonable time as is specified in the notice —

- (a) to inform it whether he holds any voting shares in the company as beneficial owner or as trustee; and
- (b) if he holds them as trustee, to indicate so far as he can the persons for whom he holds them (either

Power of company to require disclosure of beneficial interest in its voting shares. Cap. 289. 10/74.

by name or by other particulars sufficient to enable those persons to be identified) and the nature of their interest.

(2) Where a company is informed in pursuance of a notice given to any person under subsection (1) or under this subsection that any other person has an interest in any of the voting shares in a company, the company may by notice in writing require that other person within such reasonable time as is specified in the notice —

- (a) to inform it whether he holds that interest as beneficial owner or as trustee; and
- (b) if he holds it as trustee, to indicate so far as he can the persons for whom he holds it (either by name or by other particulars sufficient to enable them to be identified) and the nature of their interest.

(3) Any company to which this section applies may by notice in writing require any member of the company to inform it, within such reasonable time as is specified in the notice, whether any of the voting rights carried by any voting shares in the company held by him are the subject of an agreement or arrangement under which another person is entitled to control his exercise of those rights and, if so, to give particulars of the agreement or arrangement and the parties to it.

(4) Whenever a company receives information from a person in pursuance of a requirement imposed on him under this section with respect to shares held by a member of the company, it shall be under an obligation to inscribe against the name of that member in a separate part of the register kept by it under section 88 —

- (a) the fact that the requirement was imposed and the date on which it was imposed; and
- (b) the information received in pursuance of the requirement.

(5) Section 88 shall apply in relation to the part of the register referred to in subsection (4) as it applies in relation to the remainder of the register and as if references to subsection (1) of that section included references to subsection (4).

(6) Subject to subsection (7), any person who — 15/84.

(a) fails to comply with a notice under this section; or

(b) in purported compliance with such a notice makes any statement which he knows to be false in a material particular or recklessly makes any statement which is false in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years.

(7) A person shall not be guilty of an offence under subsection (6) (a) if he proves that the information in question was already in the possession of the company or that the requirement to give it was for any other reason frivolous or vexatious. [69N

Division 5 — Debentures

93.—(1) Every company which issues debentures (not being debentures transferable by delivery) shall keep a register of holders of the debentures at the registered office of the company or at some other place in Singapore. Register of debenture holders and copies of trust deed. U.K. s. 87. Aust. s. 70.

(2) Every company shall within 7 days after the register is first kept at a place other than the registered office lodge with the Registrar notice of the place where the register is kept and shall, within 7 days after any change in the place at which the register is kept, lodge with the Registrar notice of the change.

(3) The register shall except when duly closed be open to the inspection of the registered holder of any debentures and of any holder of shares in the company and shall contain particulars of the names and addresses of the debenture holders and the amount of debentures held by them.

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

(5) Every registered holder of debentures and every holder of shares in a company shall at his request be supplied by the company with a copy of the register of the

holders of debentures of the company or any part thereof on payment of \$1 for every page or part thereof required to be copied, but the copy need not include any particulars as to any debenture holder other than his name and address and the debentures held by him.

(6) A copy of any trust deed relating to or securing any issue of debentures shall be forwarded by the company to a holder of those debentures at his request on payment of the sum of \$3 or such less sum as is fixed by the company, or where the copy has to be specially made to meet the request on payment of \$1 for every page or part thereof required to be copied.

(7) If inspection is refused, or a copy is refused or not forwarded within a reasonable time (but not more than one month) after a request has been made pursuant to this section, the company and every officer of the company who is in default shall be guilty of an offence.

(8) A company which issues debentures may cause to be kept in any place outside Singapore a branch register of debenture holders which shall be deemed to be part of the company's register of debenture holders and Division 4 of Part V shall with such adaptations as are necessary apply to and in relation to the keeping of a branch register of debenture holders.

15/84.

(9) If a company fails to comply with this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

[70]

Specific performance of contracts.
U.K. s. 92.
Aust. s. 71.

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

[71]

Perpetual debentures.
U.K. s. 89.
Aust. s. 72.

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

[72]

96.—(1) Where a company has redeemed any debentures whether before or after the commencement of this Act —

Reissue of redeemed debentures. U.K. s. 90. Aust. s. 73.

(a) unless any provision to the contrary, whether express or implied, is contained in the articles or in any contract entered into by the company; or

(b) unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled,

the company shall have and shall be deemed always to have had power to reissue the debentures, either by reissuing the same debentures or by issuing other debentures in their place but the reissue of a debenture or the issue of one debenture in place of another under this subsection, whether the reissue or issue was made before or after the commencement of this Act, shall not be regarded as the issue of a new debenture for the purpose of any provision limiting the amount or number of debentures that may be issued by the company.

(2) After the reissue the person entitled to the debentures shall have and shall be deemed always to have had the same priorities as if the debentures had never been redeemed.

(3) Where a company has either before or after the commencement of this Act deposited any of its debentures to secure advances on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit while the debentures remain so deposited.

[73

97.—(1) Subject to this section, every corporation which offers debentures to the public for subscription or purchase in Singapore after the commencement of this Act shall make provision in those debentures or in a trust deed relating to those debentures for the appointment of a trustee corporation as trustee for the holders of the debentures.

Qualifications of trustee for debenture holders.

(2) Where a borrowing corporation is required to appoint a trustee for the holders of any debentures in accordance with subsection (1) it shall not allot any of those debentures until the appointment has been made and the trustee corporation has consented to act as trustee.

(3) Without leave of the Court, a trustee corporation shall not be appointed, hold office or act as trustee for the holders of debentures of a borrowing corporation if that trustee corporation is —

- (a) a shareholder who beneficially holds shares in the borrowing corporation;
- (b) beneficially entitled to moneys owed by the borrowing corporation to it;
- (c) a corporation that has entered into a guarantee in respect of the principal debt secured by those debentures or in respect of interest thereon; or
- (d) a corporation that is by virtue of section 6 deemed to be related to —
 - (i) any corporation of a kind referred to in paragraphs (a) to (c); or
 - (ii) the borrowing corporation.

(4) Notwithstanding anything in subsection (3), that subsection shall not prevent a trustee corporation from being appointed, holding office or acting as trustee for the holders of debentures of a borrowing corporation by reason only that —

- (a) the borrowing corporation owes to the trustee corporation or to a corporation that is deemed by virtue of section 6 to be related to the trustee corporation any moneys so long as such moneys are —
 - (i) moneys that (not taking into account any moneys referred to in sub-paragraphs (ii) and (iii)) do not, at the time of the appointment or at any time within a period of 3 months after the debentures are first offered to the public, exceed one-tenth of the amount of the debentures proposed to be offered to the public within that period and do not, at any time after the expiration of that period, exceed one-tenth of the amount owed by the borrowing corporation to the holders of the debentures;
 - (ii) moneys that are secured by, and only by, a first mortgage over land of the

borrowing corporation, or by any debentures issued by the borrowing corporation to the public or by any debentures not issued to the public which are issued pursuant to the same trust deed as that creating other debentures issued at any time by the borrowing corporation to the public or by any debentures to which the trustee corporation, or a corporation that is by virtue of section 6 deemed to be related to the trustee corporation, is not beneficially entitled; or

(iii) moneys to which the trustee corporation, or a corporation that is by virtue of section 6 deemed to be related to the trustee corporation, is entitled as trustee for holders of any debentures of the borrowing corporation in accordance with the terms of the debentures or of the relevant trust deed; or

(b) the trustee corporation, or a corporation that is deemed by virtue of section 6 to be related to the trustee corporation, is a shareholder of the borrowing corporation in respect of shares that it beneficially holds, so long as the shares in the borrowing corporation beneficially held by the trustee corporation and by all other corporations that are deemed by virtue of section 6 to be related to it, do not carry the right to exercise more than one-twentieth of the voting power at any general meeting of the borrowing corporation.

(5) Nothing in subsection (3) shall —

(a) affect the operation of any debentures or trust deed issued or executed before the commencement of this Act; or

(b) apply to or in relation to the trustee for the holders of any such debentures,

unless pursuant to any such debentures or trust deed a further offer of debentures is made to the public after the commencement of this Act.

39/75
15/84.

(6) Nothing in this Division shall apply to a prescribed corporation, and a prescribed corporation which offers debentures to the public for subscription or purchase in Singapore shall not be required to make provision in those debentures or in a trust deed relating to those debentures for the appointment of a trustee corporation as trustee for the holders of the debentures.

15/84.

(7) Where a prescribed corporation, which offers debentures to the public for subscription or purchase in Singapore, makes provision in those debentures or in a trust deed relating to those debentures for the appointment of a trustee (whether or not a trustee corporation) for the holders of the debentures, nothing in this Division shall apply to those debentures, the trust deed and the trustee.

39/75
15/84.

(8) In subsection (6) or (7), “prescribed corporation” means a corporation or class of corporation which has been declared by the Minister by notification in the *Gazette* to be a prescribed corporation for the purposes of this section.

39/75.

(9) The Minister may by notification in the *Gazette* —
 (a) specify terms and conditions subject to which subsection (6) shall have effect in relation to a prescribed corporation; or
 (b) vary or revoke any declaration or specification made under this section.

15/84.

(10) If default is made in complying with this section, the corporation and every officer of the corporation who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$4,000 and also to a default penalty. [74

Retirement
of trustees.
Aust. s. 74A.

98.—(1) Notwithstanding anything in any Act or in the relevant debentures or trust deed, a trustee for the holders of debentures shall not cease to be the trustee until a corporation qualified pursuant to section 97 for appointment as trustee for the holders of the debentures has been appointed to be the trustee for the holders of the debentures and has taken office as such.

(2) Where provision has been made in the debentures or in the relevant trust deed for the appointment of a successor to a trustee for the holders of the debentures upon retirement or otherwise, the successor may subject to section 97, be appointed in accordance with such provision.

(3) Where no provision has been made in the debentures or in the relevant trust deed for the appointment of a successor to a retiring trustee the borrowing corporation may appoint a successor which is qualified for appointment pursuant to section 97.

(4) Notwithstanding anything in this Act or in any debentures or trust deed, a borrowing corporation may, with the consent of an existing trustee for the holders of the debentures, appoint as successor to the existing trustee any corporation which is qualified for appointment pursuant to section 97 and which is deemed by virtue of section 6 to be related to the existing trustee.

(5) Where the trustee for the holders of the debentures has ceased to exist or to be qualified under section 97 or fails or refuses to act or is disqualified under that section, the Court may, on the application of the borrowing corporation or the trustee for the holders of the debentures or the holder of any of the debentures or the Minister, appoint any corporation qualified pursuant to section 97 to be the trustee for the holders of the debentures in place of the trustee which has ceased to exist or to be qualified or which has failed or refused to act as trustee or is disqualified as aforesaid.

(6) Where a successor is appointed to be a trustee in place of any trustee the successor shall within one month after the appointment lodge with the Registrar notice in the prescribed form of the appointment.

(7) Any person who fails to comply with subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty. [75

15/84.

99.—(1) Where a corporation offers debentures to the public for subscription in Singapore, the debentures or the relevant trust deed shall contain a limitation on the amount that the borrowing corporation may pursuant to those debentures or that deed borrow and shall contain covenants by the borrowing corporation, or if the debentures do not or the trust deed does not expressly contain those covenants they or it shall be deemed to contain covenants by the borrowing corporation, to the following effect:

Contents of
trust deed.
Aust. s. 74B.

- (a) that the borrowing corporation will use its best endeavours to carry on and conduct its business in a proper and efficient manner;

- (b) that, to the same extent as if the trustee for the holders of the debentures or any approved company auditor appointed by the trustee were a director of the corporation, the borrowing corporation will —
- (i) make available for its or his inspection the whole of the accounting or other records of the borrowing corporation; and
 - (ii) give to it or him such information as it or he requires with respect to all matters relating to the accounting or other records of the borrowing corporation; and
- (c) that the borrowing corporation will, on the application of persons holding not less than one-tenth in nominal value of the issued debentures to which the covenant relates delivered to its registered office, by giving notice —
- (i) to each of the holders of those debentures (other than debentures payable to bearer) at his address as specified in the register of debentures; and
 - (ii) by an advertisement in at least 4 local daily newspapers, one each published in the English, Malay, Chinese and Tamil languages addressed to all holders of those debentures,

summon a meeting of the holders of those debentures to consider the accounts and balance-sheet which were last lodged with the trustee for the holders of the debentures by the borrowing corporation and to give to the trustee directions in relation to the exercise of the trustee's powers, such meeting to be held at a time and place specified in the notice and advertisement under the chairmanship of a person nominated by the trustee or such other person as is appointed in that behalf by the holders of those debentures present at the meeting.

15/84.

(2) Where, after the commencement of this Act, any debenture (other than a debenture lawfully issued pursuant to a trust deed executed before that date) is issued and neither the debenture nor the trust deed relating to the issue of the debenture expressly contains the limitation on the

amount that the borrowing corporation may borrow and the covenants referred to in subsection (1), the corporation that issued the debenture and every officer of the corporation who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000. [76

100.—(1) Notwithstanding anything in any debenture or trust deed, the security for any debentures which are irredeemable or redeemable only on the happening of a contingency shall, if the Court so orders, be enforceable, forthwith or at such other time as the Court directs if on the application of the trustee for the holders of the debentures or (where there is no trustee) on the application of the holder of any of the debentures the Court is satisfied that —

Power of Court in relation to certain irredeemable debentures. Aust. s. 74c.

- (a) at the time of the issue of the debentures the assets of the corporation which constituted or were intended to constitute the security therefor were sufficient or likely to become sufficient to discharge the principal debt and any interest thereon;
- (b) the security, if realised under the circumstances existing at the time of the application, would be likely to bring not more than 60% of the principal sum of moneys outstanding (regard being had to all prior charges and charges ranking *pari passu* if any); and
- (c) the assets covered by the security, on a fair valuation on the basis of a going concern after allowing a reasonable amount for depreciation are worth less than the principal sum and the borrowing corporation is not making sufficient profit to pay the interest due on the principal sum or (where no definite rate of interest is payable) interest thereon at such rate as the Court considers would be a fair rate to expect from a similar investment.

(2) Subsection (1) shall not affect any power to vary rights or accept any compromise or arrangement created by the terms of the debentures or the relevant trust deed or under a compromise or arrangement between the borrowing corporation and creditors. [77

Duties of
trustees.
Aust. s. 74D.

- 101.—(1)** A trustee for the holders of debentures —
- (a) shall exercise reasonable diligence to ascertain whether or not the assets of the borrowing corporation and of each of its guarantor corporations which are or may be available whether by way of security or otherwise are sufficient or are likely to be or become sufficient to discharge the principal debt as and when it becomes due;
 - (b) shall satisfy itself that each prospectus relating to the debentures does not contain any matter which is inconsistent with the terms of the debentures or with the relevant trust deed;
 - (c) shall ensure that the borrowing corporation complies with Division 8 of this Part so far as it relates to the debentures and is applicable;
 - (d) shall exercise reasonable diligence to ascertain whether or not the borrowing corporation and each of its guarantor corporations have committed any breach of the covenants, terms and provisions of the debentures or the trust deed;
 - (e) except where it is satisfied that the breach will not materially prejudice the security, if any, for the debentures or the interests of the holders of the debentures shall take all steps and do all such things as it is empowered to do to cause the borrowing corporation and any of its guarantor corporations to remedy any breach of those covenants, terms and provisions;
 - (f) where the borrowing corporation or any of its guarantor corporations fails when so required by the trustee to remedy any breach of the covenants, terms and provisions of the debentures or the trust deed, may place the matter before a meeting of holders of the debentures, submit such proposals for the protection of their investment as the trustee considers necessary or appropriate and obtain the directions of the holders in relation thereto; and
 - (g) where the borrowing corporation submits to those holders a compromise or arrangement, shall

give to them a statement explaining the effect of the compromise or arrangement and, if it thinks fit, recommend to them an appropriate course of action to be taken by them in relation thereto.

(2) Where, after due inquiry, the trustee for the holders of the debentures at any time is of the opinion that the assets of the borrowing corporation and of any of its guarantor corporations which are or should be available whether by way of security or otherwise, are insufficient, or likely to become insufficient, to discharge the principal debt as and when it becomes due, the trustee may apply to the Minister for an order under this subsection and the Minister may, on such application, after giving the borrowing corporation an opportunity of making representations in relation to that application, by order in writing served on the corporation at its registered office in Singapore, impose such restrictions on the activities of the corporation, including restrictions on advertising for deposits or loans and on borrowing by the corporation as the Minister thinks necessary for the protection of the interests of the holders of the debentures or the Minister may, and if the borrowing corporation so requires, shall, direct the trustee to apply to the Court for an order under subsection (4) and the trustee shall apply accordingly.

(3) Where —

- (a) after due inquiry, the trustee at any time is of the opinion that the assets of the borrowing corporation and of any of its guarantor corporations which are or should be available, whether by way of security or otherwise, are insufficient or likely to become insufficient, to discharge the principal debt as and when it becomes due; or
- (b) the corporation has contravened or failed to comply with an order made by the Minister under subsection (2),

the trustee may, and where the borrowing corporation has requested the trustee to do so, the trustee shall apply to the Court for an order under subsection (4).

(4) Where an application is made to the Court under subsection (2) or (3), the Court may, after giving the borrowing corporation an opportunity of being heard, by order, do all or any of the following things:

- (a) direct the trustee to convene a meeting of the holders of the debentures for the purpose of

placing before them such information relating to their interests and such proposals for the protection of their interests as the trustee considers necessary or appropriate, and of obtaining their directions in relation thereto and give such directions in relation to the conduct of the meeting as the Court thinks fit;

- (b) stay all or any actions or proceedings before any court by or against the borrowing corporation;
- (c) restrain the payment of any moneys by the borrowing corporation to the holders of debentures of the corporation or to any class of such holders;
- (d) appoint a receiver of such of the property as constitutes the security, if any, for the debentures;
- (e) give such further directions from time to time as may be necessary to protect the interests of the holders of the debentures, the members of the borrowing corporation or any of its guarantor corporations or the public,

but in making any such order the Court shall have regard to the rights of all creditors of the borrowing corporation.

(5) The Court may vary or rescind any order made under subsection (4) as the Court thinks fit.

(6) A trustee in making any application to the Minister or to the Court shall have regard to the nature and kind of the security given when the debentures were offered to the public, and if no security was given shall have regard to the position of the holders of the debentures as unsecured creditors of the borrowing corporation.

(7) A trustee may rely upon any certificate or report given or statement made by any solicitor, auditor or officer of the borrowing corporation or guarantor corporation if it has reasonable grounds for believing that such solicitor, auditor or officer was competent to give or make the certificate, report or statement. [78

Powers of trustee to apply to Court for directions, etc.
Aust. s. 74E.

102.—(1) The trustee for the holders of debentures may apply to the Court —

- (a) for directions in relation to any matter arising in connection with the performance of the functions of the trustee; or

- (b) to determine any question in relation to the interests of the holders of debentures,
and the Court may —
- (c) give such directions to the trustee as the Court thinks fit; and
- (d) if satisfied that the determination of the question will be just and beneficial, accede wholly or partially to any such application on such terms and conditions as the Court thinks fit or make such other order on the application as the Court thinks just.

(2) The Court may, on an application under this section, order a meeting of all or any of the holders of debentures to be called to consider any matters in which they are concerned and to advise the trustee thereon and may give such ancillary or consequential directions as the Court thinks fit.

(3) The meeting shall be held and conducted in such manner as the Court directs, under the chairmanship of a person nominated by the trustee or such other person as the meeting appoints. [79]

103.—(1) Where there is a trustee for the holders of any debentures of a borrowing corporation the directors of the borrowing corporation shall —

Obligations
of borrowing
corporation.
Aust. s. 74F.

- (a) at the end of a period not exceeding 3 months ending on a day (not later than 6 months after the commencement of this Act or after the date of the relevant prospectus, whichever is the later) which the trustee is hereby required to notify to the borrowing corporation in writing; and
- (b) at the end of each succeeding period thereafter, being a period of 3 months or such shorter time as the trustee may, in any special circumstances allow,

prepare a report that relates to that period and complies with the requirements of subsection (2) and within one month after the end of each such period lodge a copy of the report relating to that period with the Registrar and with the trustee.

(2) The report referred to in subsection (1) shall be signed by not less than two of the directors on behalf of all

of them and shall set out in detail any matters adversely affecting the security or the interests of the holders of the debentures and, without affecting the generality of subsection (1), shall state —

- (a) whether or not the limitations on the amount that the corporation may borrow have been exceeded;
- (b) whether or not the borrowing corporation and each of its guarantor corporations have observed and performed all the covenants and provisions binding upon them respectively by or pursuant to the debentures or any trust deed;
- (c) whether or not any event has happened which has caused or could cause the debentures or any provision of the relevant trust deed to become enforceable and if so, particulars of that event;
- (d) whether or not any circumstances affecting the borrowing corporation, its subsidiaries or its guarantor corporations or any of them have occurred which materially affect any security or charge included in or created by the debentures or any trust deed and if so, particulars of those circumstances;
- (e) whether or not there has been any substantial change in the nature of the business of the borrowing corporation or any of its subsidiaries or any of its guarantor corporations since the debentures were first issued to the public which has not previously been reported upon as required by this section and, if so, particulars of that change; and
- (f) where the borrowing corporation has deposited money with or lent money to or assumed any liability of a corporation which pursuant to section 6 is deemed to be related to the borrowing corporation, particulars of —
 - (i) the total amounts so deposited or loaned and the extent of any liability so assumed during the period covered by the report; and
 - (ii) the total amounts owing to the borrowing corporation in respect of money so

deposited or loaned and the extent of any liability so assumed as at the end of the period covered by the report,

distinguishing between deposits loans and assumptions of liabilities which are secured and those which are unsecured, but not including any deposit with or loan to or any liability assumed on behalf of a corporation if that corporation has guaranteed the repayment of the debentures of the borrowing corporation and has secured the guarantee by a charge over its assets in favour of the trustee for the holders of the debentures of the borrowing corporation.

(3) Any person who fails to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$4,000 and also to a default penalty of \$1,000. 15/84.

(4) Where there is a trustee for the holders of any debentures issued by a borrowing corporation, the borrowing corporation and each of its guarantor corporations which has guaranteed the repayment of the moneys raised by the issue of those debentures shall (within 21 days after the creation of the charge) in writing furnish the trustee for the holders of the debentures, whether or not any demand therefor has been made, with particulars of any charge created by the corporation or the guarantor corporation, as the case requires, and when the amount to be advanced on the security of the charge is indeterminate (within 7 days after the advance) with particulars of the amount or amounts in fact advanced but where any such advances are merged in a current account with bankers or trade creditors it shall be sufficient for particulars of the net amount outstanding in respect of any such advances to be furnished every 3 months.

(5) The directors of every borrowing corporation and of every guarantor corporation shall, at some date not later than 9 months after the expiration of each financial year of the corporation, cause to be made out and lodged with the Registrar and with the trustee for the holders of the debentures, if any, a profit and loss account for the period from the end of that financial year until the expiration of

6 months after the end of that financial year and a balance-sheet as at the end of the period to which the profit and loss account relates.

15/84.

(6) Any person who fails to comply with subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

(7) Section 201 (4) to (7) and (11) to (16) and section 207 (1), (2) and (7), shall with such adaptations as are necessary be applicable to every profit and loss account and balance-sheet made out and lodged pursuant to subsection (5) as if that profit and loss account and balance-sheet were a profit and loss account and balance-sheet referred to in those sections.

(8) Where the directors of a borrowing corporation do not lodge with the trustee for the holders of debentures a report as required by subsection (1) or where the directors of a borrowing corporation or the directors of a guarantor corporation do not lodge with the trustee the balance-sheets and profit and loss accounts as required by subsection (5) within the time prescribed the trustee shall forthwith lodge notice of that fact with the Registrar.

(9) (a) Notwithstanding anything in subsection (7), a profit and loss account and balance-sheet of a borrowing corporation or its guarantor corporation required to be made out and lodged in accordance with subsection (5) need not be audited or the audit thereof may be of a limited nature or extent if the trustee for the holders of the debentures of the borrowing corporation has, by notice in writing, consented to the audit being dispensed with or being of a limited nature or extent, as the case may be.

(b) Where the trustee has, by notice in writing, so consented, the directors of the corporation in respect of whose profit and loss account and balance-sheet the notice was given, shall lodge with the Registrar a copy of the notice at the time when the profit and loss account and balance-sheet to which the notice relates are lodged with the Registrar.

(c) Notwithstanding anything in this section, a profit and loss account and balance-sheet of a borrowing corporation or its guarantor corporation required to be made out and lodged in accordance with subsection (5) may, unless the

trustee for the holders of the debentures of the borrowing corporation otherwise requires in writing, be based upon the value of the stock in trade of the borrowing corporation or the guarantor corporation, as the case may be, as reasonably estimated by the directors thereof on the basis of the values of such stock in trade as adopted for the purpose of the profit and loss account and balance-sheet of that corporation laid before the corporation at its last preceding annual general meeting and certified in writing by the directors as such. [80

104.—(1) For the purpose of the preparation of a report that, by this Act, is required to be signed by or on behalf of the directors of a borrowing corporation or any of them, that corporation may, by notice in writing, require any of its guarantor corporations to furnish it with any information relating to that guarantor corporation which is, by this Act, required to be contained in that report, and that guarantor corporation shall furnish the borrowing corporation with that information before such date, being a date not earlier than 14 days after the notice is given, as may be specified in that behalf in the notice. Obligation of guarantor corporation to furnish information. Aust. s. 74G.

(2) A guarantor corporation which fails to comply with a requirement contained in a notice given pursuant to subsection (1) and every officer of that corporation who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$4,000 and also to a default penalty. 15/84. [81

105.—(1) Where in any prospectus issued in connection with an invitation to the public to subscribe for or to purchase debentures of a corporation there is a statement as to any particular purpose or project for which the moneys received by the corporation in response to the invitation are to be applied the corporation shall from time to time make reports to the trustee for the holders of those debentures as to the progress that has been made towards achieving such purpose or completing such project. Loans and deposits to be immediately repayable on certain events. Aust. s. 74H.

(2) Each such report shall be included in the report required to be furnished to the trustee for the holders of the debentures under section 103 (1).

(3) When it appears to the trustee for the holders of the debentures that such purpose or project has not been

achieved or completed within the time stated in the prospectus within which the purpose or project is to be achieved or completed or, where no such time was stated, within a reasonable time, the trustee may and, if in his opinion it is necessary for the protection of the interests of the holders of the debentures, shall give notice in writing to the corporation requiring it to repay the moneys so received by the corporation and, within one month after such notice is given, lodge with the Registrar a copy thereof.

(4) The trustee shall not give a notice pursuant to subsection (3) if it is satisfied —

- (a) that the purpose or project has been substantially achieved or completed;
- (b) that the interests of the holders of debentures have not been materially prejudiced by the failure to achieve or complete the purpose or project within the time stated in the prospectus or within a reasonable time; or
- (c) that the failure to achieve the purpose or project was due to circumstances beyond the control of the corporation that could not reasonably have been foreseen by the corporation at the time that the prospectus was issued.

(5) Upon receipt by the corporation of a notice referred to in subsection (3), the corporation shall be liable to repay, and on demand in writing by any person entitled thereto shall immediately repay to him any moneys owing to him as the result of a loan or deposit made in response to the invitation unless —

- (a) before the moneys were accepted by the corporation the corporation had given notice in writing to the persons from whom the moneys were received specifying the purpose or project for which the moneys would in fact be used and the moneys were accepted by the corporation accordingly; or
- (b) the corporation by notice in writing served on the holders of the debentures —
 - (i) had specified the purpose or project for which the moneys would in fact be applied by the corporation; and

- (ii) had offered to repay the moneys to the holders of the debentures, and that person had not within 14 days after the receipt of the notice, or such longer time as was specified in the notice, in writing demanded from the corporation repayment of the money.

(6) Where the corporation has given a notice in writing as provided in subsection (5), specifying the purpose or project for which the moneys will in fact be applied by the corporation, this section shall apply and have effect as if the purpose or project so specified in the notice was the particular purpose or project specified in the prospectus as the purpose or project for which the moneys were to be applied.

[82

106.—(1) Subject to this section, any provision contained in a trust deed relating to or securing an issue of debentures, or in any contract with the holders of debentures secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof from or indemnifying it against liability for breach of trust where it fails to show the degree of care and diligence required of it as trustee.

Liability of trustees for debenture holders.
U.K. s. 88.
Aust. s. 75.

(2) Subsection (1) shall not invalidate —

- (a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or
- (b) any provision enabling such a release to be given —
 - (i) on the agreement thereto of a majority of not less than three-fourths in nominal value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose; and
 - (ii) either with respect to specific acts or omissions or on the dissolution of the trustee or on its ceasing to act.

(3) Subsection (1) shall not operate —

- (a) to invalidate any provision in force on the commencement of this Act so long as any trustee then entitled to the benefit of that provision remains a trustee of the deed in question; or

- (b) to deprive any trustee of any exemption or right to be indemnified in respect of anything done or omitted to be done by the trustee while any such provision was in force. [83

Division 6 — Interests other than shares, debentures, etc.

Interpreta-
tion of this
Division.
Aust. s. 76.
62/70.

107.—(1) In this Division and in the Seventh Schedule, unless inconsistent with the context or subject matter —

“company” means a public company, and includes a corporation that is a public company under the law of a proclaimed country and is registered as a foreign company in Singapore;

“financial year”, in relation to a deed, means the period of 12 months ending on 31st December or on such other date as is specified in lieu thereof in the deed;

“interest” means any right to participate or interest, whether enforceable or not and whether actual, prospective or contingent —

(a) in any profits, assets or realisation of any financial or business undertaking or scheme whether in Singapore or elsewhere;

(b) in any common enterprise whether in Singapore or elsewhere in which the holder of the right or interest is led to expect profits, rent or interest from the efforts of the promoter of the enterprise or a third party; or

(c) in any investment contract, whether or not the right or interest is evidenced by a formal document and whether or not the right or interest relates to a physical asset, but does not include —

(d) any share in or debenture of a corporation;
or

(e) any interest in or arising out of a policy of life insurance;

“investment contract” means any contract, scheme or arrangement which in substance and irrespective of the form thereof involves the investment of

money in or under such circumstances that the investor acquires or may acquire an interest in or right in respect of property which under or in accordance with the terms of investment will, or may at the option of the investor, be used or employed in common with any other interest in or right in respect of property acquired in or under like circumstances;

“management company”, in relation to any interests issued or proposed to be issued or any deed that relates to any interests issued or proposed to be issued means a company by or on behalf of which the interests have been or are proposed to be issued and includes any person for the time being exercising the functions of the management company;

“proclaimed country” means a country which the Minister has, by notification in the *Gazette*, declared to be a proclaimed country for the purposes of this Division.

(2) A reference in this Division to a deed shall be read as including a reference to any instrument amending or affecting the deed. [84

108. For the purposes of this Division, a deed shall be an approved deed if — Approved deeds.
Aust. s. 77.

- (a) the Registrar has granted his approval to the deed under this Division; and
- (b) the Minister has granted his approval under this Division to the trustee or representative appointed for the purposes of the deed acting as trustee or representative and that approval has not been revoked and the trustee or representative has not ceased to hold office. [85

109.—(1) Where a deed makes provision for the appointment of a company as trustee for or representative of the holders of interests issued or proposed to be issued by a company the Registrar may, subject to this section, grant his approval to the deed. Approval of deeds.
Aust. s. 78.

(2) The Registrar shall not grant his approval to a deed unless the deed —

- (a) complies with the requirements of this Division; and
- (b) makes provision for such other matters and things as are required by the regulations to be included in the deed and if regulations have been made prescribing the charges that may be made by a management company, unless the deed provides —
 - (i) that the charges to be made by the management company do not exceed such percentages or amounts as are prescribed; and
 - (ii) that the price at which the interests to which the deed relates are to be sold or purchased by the management company are consistent with the regulations relating to such prices.

(3) Within 7 days after a deed has been approved under this section, the management company shall lodge in the office of the Registrar the deed, or a copy of the deed verified by statutory declaration, and the copy shall for all purposes, in the absence of proof that it is not a true copy, be regarded as an original. [86

Approval of trustees.
Aust. s. 79.

110.—(1) The Minister may, subject to such terms and conditions as he thinks fit, grant his approval to a company acting as trustee or representative for the purposes of a deed.

(2) The Minister may, at any time, by reason of a breach of a term or condition subject to which the approval was granted or for any other reason, revoke an approval granted by him under this section. [87

Covenants to be included in deeds.
Aust. s. 80.

111.—(1) A deed shall, for the purposes of section 109 (2) (a), contain covenants to the following effect:

- (a) a covenant binding the management company that it will use its best endeavours to carry on and conduct its business in a proper and efficient manner and to ensure that any undertaking, scheme or enterprise to which the deed relates is

carried on and conducted in a proper and efficient manner;

- (b) covenants binding the management company —
- (i) that the management company will pay to the trustee or representative, within 30 days after their receipt by the company, any moneys that, under the deed, are payable by the company to the trustee or representative;
 - (ii) that the management company will not sell any interest to which the deed relates otherwise than at a price calculated in accordance with the provisions of the deed;
 - (iii) that the management company will, at the request of the holder of an interest, purchase that interest from the holder and that the purchase price will be a price calculated in accordance with the provisions of the deed; and
 - (iv) that the management company will not, without the approval of the trustee or representative, publish or cause to be published any advertisement, circular or other document containing any statement with respect to the sale price of interests to which the deed relates or the yield therefrom or containing any invitation to buy interests;
- (c) covenants binding the trustee or representative that it will —
- (i) exercise all due diligence and vigilance in carrying out its functions and duties and in watching the rights and interests of the holders of the interests to which the deed relates;
 - (ii) keep or cause to be kept proper books of account in relation to those interests;
 - (iii) cause those accounts to be audited at the end of each financial year by an approved company auditor; and

- (iv) send or cause to be sent by post a statement of the accounts with the report of the auditor thereon within two months of the end of the financial year, to each of the holders of those interests;
- (d) a covenant binding the management company and the trustee or representative, respectively, that no moneys available for investment under the deed will be invested in or lent to the management company, or to the trustee or representative, or to any company (other than a prescribed corporation within the meaning of section 44 (6)) which is by virtue of section 6 deemed to be related to the management company or to the trustee or representative;
- (e) a covenant binding the management company that, to the same extent as if the trustee or representative were a director of the company, the company will —
 - (i) make available to the trustee or representative, or to any approved company auditor appointed by it, for inspection the whole of the books of the company whether kept at the registered office or elsewhere; and
 - (ii) give to the trustee or representative or to any such auditor such oral or written information as it or he requires with respect to all matters relating to the undertaking, scheme or enterprise of the company or any property (whether acquired before or after the date of the deed) of the company or otherwise relating to the affairs thereof;
- (f) a covenant binding the management company that the management company will make available, or ensure that there is made available, to the trustee or representative such details as the trustee or representative requires with respect to all matters relating to the undertaking, scheme or enterprise to which the deed relates;
- (g) as from a day to be fixed by the Minister by notification in the *Gazette*, covenants binding

the management company and the trustee or representative, respectively, that the management company or the trustee or representative, as the case may be, will not exercise the right to vote in respect of any shares relating to the interests to which the deed relates held by the management company, trustee or representative at any election for directors of a corporation whose shares are so held, without the consent of the majority of the holders of the interests to which the deed relates present in person and voting given at a meeting of those holders summoned in the manner provided for in paragraph (h) (i) and (ii) for the purpose of authorising the exercise of the right at the next election; and

(h) a covenant binding the management company that the management company will within 21 days after an application is delivered to the company at its registered office, being an application by not less than 50, or one-tenth in number, whichever is the less, of the holders of the interests to which the deed relates —

(i) by sending notice by post of the proposed meeting at least 7 days before the proposed meeting to each of those holders at his last known address or in the case of joint holders to the joint holder whose name stands first in the company's records; and

(ii) by publishing at least 14 days before the proposed meeting an advertisement giving notice of the meeting in a newspaper circulating generally in Singapore,

summon a meeting of the holders for the purpose of laying before the meeting the accounts and balance-sheet which were laid before the last preceding annual general meeting of the management company or the last audited statement of accounts of the trustee or representative, and for the purpose of giving to the trustee or representative such directions as the meeting thinks proper.

(2) A meeting summoned for the purposes of a covenant contained in a deed in pursuance of subsection (1) (g) or (h) shall be held at the time and place specified in the notice and advertisement, being a time not later than two months after the giving of the notice, under the chairmanship of —

- (a) such person as is appointed in that behalf by the holders of the interests to which the deed relates present at the meeting; or
- (b) where no such appointment is made, a nominee of the trustee or representative approved by the Registrar,

and shall be conducted in accordance with the provisions of the deed or, in so far as the deed makes no provision, as directed by the chairman of the meeting.

(3) Notwithstanding anything to the contrary in an approved deed, the undertaking, scheme, enterprise, contract or arrangement to which the deed relates may be continued in operation or existence if it appears to be in the interests of the holders of the interests to which the deed relates during such period as is or such periods as are agreed upon by the trustee or representative and the management company.

(4) Where a direction is given to the trustee or representative at a meeting summoned pursuant to a covenant complying with subsection (1) (h), the trustee or representative —

- (a) shall comply with the direction unless it is inconsistent with the deed or this Act; and
- (b) shall not be liable for anything done or omitted to be done by it by reason only of its following that direction.

(5) Where the trustee or representative is of the opinion that any direction so given is inconsistent with the deed or this Act or is otherwise objectionable, the trustee or representative may apply to the Court for an order confirming, setting aside or varying the direction and the Court may make such order as it thinks fit. [88

Interests to
be issued by
companies
only.
Aust. s. 81.

112. No person, except a company or an agent of a company authorised in that behalf under the seal of the company, shall issue or offer to the public for subscription or purchase or shall invite the public to subscribe for or purchase any interest. [89

113.—(1) Before a company or an agent of a company issues or offers to the public for subscription or purchase or invites the public to subscribe for or purchase any interest the company shall issue or cause to be issued a statement in writing in connection therewith which statement shall for all purposes be deemed to be a prospectus issued by a company, and, subject to subsection (2), all provisions of this Act and rules of law relating to prospectuses or to the offering or to an intended offering of shares for subscription or purchase to the public shall with such adaptations as are necessary apply and have effect accordingly as if the interest were shares offered or intended to be offered to the public for subscription or purchase and as if persons accepting any offer or invitation in respect of or subscribing for or purchasing any such interest were subscribers for shares.

Statement to
be issued.
Aust. s. 82.

(2) Subject to subsection (3), the statement shall set out —

- (a) the matters and reports specified in the Seventh Schedule; and
- (b) such other matters as are required by the regulations to be set out in the statement,

with such adaptations as the circumstances of each case require and the Registrar approves.

(3) A matter or report referred to in subsection (2) may be omitted from a statement if having regard to the nature of the interest the Registrar is of the opinion that the matter or report is not appropriate for inclusion in the statement and has by writing under his hand approved the omission.

[90

114.—(1) A person shall not issue or offer to the public for subscription or purchase or invite the public to subscribe for or purchase any interest unless, at the time of the issue, offer or invitation, there is in force, in relation to the interest, a deed that is an approved deed.

No issue
without
approved
deed.
Aust. s. 83.

(2) A person shall not in any deed, prospectus, statement, advertisement or other document relating to any interest make any reference to an approval of a deed or of a trustee or representative granted under this Division.

(3) Where —

- (a) an interest issued by a corporation before the commencement of this Act is in existence immediately before that date;
- (b) this Division would have applied in relation to the issue of the interest if the interest had been issued on or after that date;
- (c) there is not, at the expiration of 3 months after that date, a deed that is an approved deed in force in relation to the interest; and
- (d) the corporation did not, within a period of one month after that date, apply for approval under this Division of a deed in relation to the interest or, if it did so apply, approval was refused,

the corporation shall, within 14 days after the expiration of the period referred to in paragraph (c), give to the holder of the interest and to the Registrar notice in writing that there is not in force in relation to that interest a deed that is an approved deed and, if this subsection is not complied with, each director of the corporation shall, in addition to the corporation, be deemed to have failed to comply with this subsection.

(4) The Minister may modify the application to a corporation of subsection (3) by extending any period referred to in that subsection or may exempt any corporation from compliance with that subsection.

(5) Nothing in subsection (3) shall be construed as authorising the Registrar to grant his approval to a deed that relates to an interest issued by a corporation that is not a company for the purposes of this Division. [91

Register of
interest
holders.
Aust. s. 84.

115.—(1) The management company shall in respect of each deed with which the company is concerned keep a register of the holders of interests under the deed and enter therein —

- (a) the names and addresses of the holders;
- (b) the extent of the holding of each holder and, if his interest consists of a specific interest in any property, a description of the property and its location sufficient to identify it;
- (c) the date at which the name of each person was entered in the register as a holder; and

(d) the date at which any person ceased to be a holder.

(2) Division 4 of Part V shall so far as is applicable and with such adaptations as are necessary apply to and in relation to the register.

(3) A management company which —

(a) keeps a register of holders of interests at a place within 5 kilometres of the office of the Registrar; and

(b) provides reasonable accommodation and facilities for persons to inspect and take copies of its list of interest holders,

need not comply with section 116 (1) (a) in relation to the deed under which the interests are held unless the Minister by notification in the *Gazette* otherwise directs. [92

116.—(1) Where a deed is or has at any time been an approved deed, the management company shall, so long as the deed or any deed in substitution in whole or in part for the deed, remains in force, lodge with the Registrar, within two months after the end of each financial year applicable to the deed —

Returns,
information,
etc., relating
to interests.
Aust. s. 85.

(a) a return containing a list of all persons who, at the end of the financial year, were holders of the interests to which the deed relates, showing the name and address of each holder and the extent of his holding and, if his interest consists of a specific interest in any property, a description of the property and its location sufficient to identify it;

(b) a summary of —

(i) all purchases and sales of land and marketable securities affecting the interests of the holders during the financial year; and

(ii) all other investments affecting the interests of the holders made during the financial year, showing the descriptions and quantities of those investments;

(c) a statement of the total amount of brokerage affecting the interests of the holders paid or charged by the management company during

the financial year and the proportion thereof paid to any stock or share broker, or any partner, employee or nominee of any stock or share broker, who is an officer of the company and the proportion retained by the company;

- (d) a list of all parcels of land and marketable securities, and other investments, held by the trustee or representative in relation to the deed, as at the end of the financial year, showing the value of the land, securities or other investments and the basis of the valuations; and
- (e) such other statements and particulars, if any, as may be prescribed.

(2) Any document required to be lodged with the Registrar by the management company under subsection (1) shall be signed by at least one director of the management company.

(3) A company to which subsection (1) applies shall, if so requested by any holder of an interest to which the deed relates within a period of one month after the end of the financial year, send by post or cause to be sent by post to the holder, within two months after the end of the financial year, a copy of the documents which the company is required to lodge with the Registrar by virtue of subsection (1) (b) to (e). [93

Penalty for
contraven-
tion of
Division, etc.
Aust. s. 86.
15/84.

117.—(1) Any person who —

- (a) contravenes or fails to comply with a provision of this Division; or
- (b) fails to comply with a covenant contained or deemed to be contained in any deed that is or at any time has been an approved deed,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months.

(2) A person shall not be relieved from any liability to any holder of an interest by reason of any contravention of, or failure to comply with, a provision of this Division.

[94

118.—(1) Where the management company under a deed is in liquidation or where, in the opinion of the trustee or representative, the management company has ceased to carry on business or has, to the prejudice of holders of interests to which the deed relates, failed to comply with any provision of the deed, the trustee or representative shall summon a meeting of the holders.

Winding up
of schemes,
etc.
Aust. s. 87.

(2) A meeting under subsection (1) shall be summoned —

- (a) by sending by post notice of the proposed meeting at least 21 days before the proposed meeting to each holder at his last known address or, in the case of joint holders, to the joint holder whose name stands first in the company's records; and
- (b) by publishing, at least 21 days before the proposed meeting, an advertisement giving notice of the meeting in at least 4 local daily newspapers, one each published in the English, Malay, Chinese and Tamil languages.

(3) Section 111 (2) shall apply to such a meeting as if the meeting were a meeting referred to in that section.

(4) If at any such meeting a resolution is passed by a majority in number representing three-fourths in value of the holders of the interests present and voting either in person or by proxy at the meeting that the undertaking, scheme, enterprise, contract or arrangement to which the deed relates be wound up, the trustee or representative shall apply to the Court for an order confirming the resolution.

(5) On an application by the trustee or representative the Court may, if it is satisfied that it is in the interest of the holders of the interests, confirm the resolution and may make such orders as it thinks necessary or expedient for the effective winding up of the undertaking, scheme, enterprise, contract or arrangement.

[95

119.—(1) The Minister may, by notification in the *Gazette*, exempt any company, subject to such terms and conditions as are specified in the notification, from complying with all or any of the provisions of this Division in relation to any interest, or class of interests, specified in the notification, and may, by notification in the *Gazette*, revoke such a notification or vary it in such manner as he thinks fit.

Power to
exempt from
compliance
with Division
and non-
application of
Division in
certain cir-
cumstances.
Aust. s. 88.

Non-applica-
tion of
Division to
personal
representa-
tives, etc.

(2) This Division shall not apply in the case of the sale of any interest by a personal representative, liquidator, receiver or trustee in bankruptcy in the normal course of realisation of assets. [96]

Liability of
trustees.
U.K. s. 88.
Aust. s. 89.

120.—(1) Subject to this section, any provision in a deed that is or at any time has been an approved deed, or in any contract with the holders of interests to which such a deed relates, shall be void in so far as it would have the effect of exempting a trustee or representative under the deed from, or indemnifying a trustee or representative against, liability for breach of trust where the trustee or representative fails to show the degree of care and diligence required of a trustee or representative.

(2) Subsection (1) shall not invalidate —

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

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

(i) on the agreement thereto of a majority of not less than three-fourths of the holders of interests voting in person or by proxy at a meeting summoned for the purpose; and

(ii) either with respect to specific acts or omissions or on the trustee or representative ceasing to act. [97]

Division 7 — Title and transfers

Nature of
shares.
U.K. s. 73.
Aust. s. 90.

121. The shares or other interest of any member in a company shall be movable property, transferable in the manner provided by the articles, and shall not be of the nature of immovable property. [98]

Numbering
of shares.
U.K. s. 74.
Aust. s. 91.

122.—(1) Each share in a company shall be distinguished by an appropriate number.

(2) Notwithstanding subsection (1) —

(a) if at any time all the issued shares in a company or all the issued shares therein of a particular class are fully paid up and rank equally for all

purposes, none of those shares need thereafter have a distinguishing number so long as each of those shares remains fully paid up and ranks equally for all purposes with all shares of the same class for the time being issued and fully paid up; or

- (b) if all the issued shares in a company are evidenced by certificates in accordance with section 123 and each certificate is distinguished by an appropriate number and that number is recorded in the register of members, none of those shares need have a distinguishing number.
- [99

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

Certificate to be evidence of title.
U.K. s. 81.
Aust. s. 92.

(2) Every share certificate shall be under the common seal of the company or, in the case of a share certificate relating to shares on a branch register, the official seal of the company and shall state as at the date of the issue of the certificate —

- (a) the name of the company and the authority under which the company is constituted;
- (b) the address of the registered office of the company in Singapore, or, where the certificate is issued by a branch office, the address of that branch office; and
- (c) the nominal value and the class of the shares and the extent to which the shares are paid up.

(3) Failure to comply with this section shall not affect the rights of any holder of shares.

(4) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence.

[100

124. A company may, if authorised by its articles, have a duplicate common seal which shall be a facsimile of the common seal of the company with the addition on its face of the words “Share Seal” and a certificate under such duplicate seal shall be deemed to be sealed with the common seal of the company for the purposes of this Act.

[101

Company may have duplicate common seal.
Aust. s. 93.

Loss or
destruction of
certificates.
Aust. s. 94.

125.—(1) Subject to subsection (2), where a certificate or other document of title to shares or debentures is lost or destroyed, the company shall on payment of a fee not exceeding \$2 issue a duplicate certificate or document in lieu thereof to the owner on his application accompanied by —

- (a) a statutory declaration that the certificate or document has been lost or destroyed, and has not been pledged, sold or otherwise disposed of, and, if lost, that proper searches have been made; and
- (b) an undertaking in writing that if it is found or received by the owner it will be returned to the company.

(2) Where the value of the shares or debentures represented by the certificate or document is greater than \$500 the directors of the company may, before accepting an application for the issue of a duplicate certificate or document, require the applicant —

- (a) to cause an advertisement to be inserted in a newspaper circulating in a place specified by the directors stating that the certificate or document has been lost or destroyed and that the owner intends after the expiration of 14 days after the publication of the advertisement to apply to the company for a duplicate; or
- (b) to furnish a bond for an amount equal to at least the current market value of the shares or debentures indemnifying the company against loss following on the production of the original certificate or document,

or may require the applicant to do both of those things. [102

Instrument of
transfer.
U.K. ss. 75,
76, 82.
Aust. s. 95.

126.—(1) Notwithstanding anything in its articles, a company shall not register a transfer of shares or debentures unless a proper instrument of transfer has been delivered to the company, but this subsection shall not prejudice any power to register as a shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

Transfer by
personal
representatives.

(2) A transfer of the share, debenture or other interest of a deceased person made by his personal representative shall, although the personal representative is not himself a

member of the company, be as valid as if he had been such a member at the time of the execution of the instrument of transfer.

(3) 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.

(4) In this section “instrument of transfer” includes a written application for transmission of a share debenture or other interest to a personal representative. [103

127.—(1) On the request in writing of the transferor of any share, debenture or other interest in a company the company shall enter in the appropriate register 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.

Registrations
of transfer at
request of
transferor.
U.K. s. 77.
Aust. s. 96.

(2) On the request in writing of the transferor of a share or debenture the company shall by notice in writing require the person having the possession, custody or control of the share certificate or debenture and the instrument of transfer thereof or either of them to bring it or them into the office of the company within a stated period, being not less than 7 and not more than 28 days after the date of the notice, to have the share certificate or debenture cancelled or rectified and the transfer registered or otherwise dealt with.

(3) If any person refuses or neglects to comply with a notice given under subsection (2), the transferor may apply to a judge to issue a summons for that person to appear before the Court and show cause why the documents mentioned in the notice should not be delivered up or produced as required by the notice.

(4) Upon appearance of a person so summoned the Court may examine him upon oath and receive other evidence, or if he does not appear after being duly served with such summons, the Court may receive evidence in his absence and in either case the Court may order him to deliver up such documents to the company upon such terms or conditions as to the Court seems fit, and the costs of the

summons and proceedings thereon shall be in the discretion of the Court.

(5) Lists of share certificates or debentures called in under this section and not brought in shall be exhibited in the office of the company and shall be advertised in such newspapers and at such times as the company thinks fit. [104

Notice of refusal to register transfer.
U.K. s. 78.
Aust. s. 97.

128.—(1) If a company refuses to register a transfer of any shares, debentures or other interests in the company it shall, within one month after the date on which the transfer was lodged with it, send to the transferor and to the transferee notice of the refusal.

10/74.

(2) Where an application is made to a company for a person to be registered as a member in respect of shares which have been transferred or transmitted to him by act of parties or operation of law, the company shall not refuse registration by virtue of any discretion in that behalf conferred by the articles unless it has served on the applicant, within one month beginning with the day on which the application was made, a notice in writing stating the facts which are considered to justify refusal in the exercise of that discretion.

15/84.

(3) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

[105

Certification of transfers.
U.K. s. 79.
Aust. s. 98.

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

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

(3) Where any certification is expressed to be limited to 42 days or any longer period from the date of certification, the company and its officers shall not, in the absence of fraud, be liable in respect of the registration of any transfer of shares, debentures or other interests comprised in the certification after the expiration of the period so limited or any extension thereof given by the company if the instrument of transfer has not within that period been lodged with the company for registration.

(4) For the purposes of this section —

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

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

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

(ii) the certification is signed by a person apparently authorised to certificate transfers on the company’s behalf or by any officer either of the company or of a corporation so apparently authorised; and

(c) a certification that purports to be authenticated by a person’s signature or initials (whether handwritten or not) shall be deemed to be signed by him unless it is shown that the signature or initials were not placed there by him and were not placed there by any other person apparently authorised to use the signature or initials for the purpose of certificating transfers on the company’s behalf. [106

130.—(1) Every company shall within two months after the allotment of any of its shares or debentures, and within one month after the date on which a transfer (other than such a transfer as the company is for any reason entitled to refuse to register and does not register) of any of its shares or debentures is lodged with the company, complete and have ready for delivery all the appropriate certificates and debentures in connection with the allotment or transfer.

Duties of company with respect to issue of certificates.
U.K. s. 80.
Aust. s. 99.

15/84.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

Power of Court where default in issue of certificates.

(3) If any company on which a notice has been served requiring the company to make good any default in complying with this section fails to make good the default within 10 days after the service of the notice, the Court may, on the application of the person entitled to have the certificates or the debentures delivered to him, make an order directing the company and any officer of the company to make good the default within such time as is specified in the order, and the order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company in default in such proportions as the Court thinks fit. [107

Division 8 — Registration of charges

Registration of charges. Aust. s. 100.

131.—(1) Subject to this Division, where a charge to which this section applies is created by a company there shall be lodged with the Registrar for registration, within 30 days after the creation of the charge, a statement of the prescribed particulars and —

- (a) the instrument, if any, by which the charge is created or evidenced; or
- (b) a copy thereof together with an affidavit verifying the execution of the charge and also verifying the copy as being a true copy of the instrument,

and if this section is not complied with in relation to the charge the charge shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company.

(2) Nothing in subsection (1) shall prejudice any contract or obligation for repayment of the money secured by a charge and when a charge becomes void under this section the money secured thereby shall immediately become payable.

- (3) The charges to which this section applies are —
 - (a) a charge to secure any issue of debentures;
 - (b) a charge on uncalled share capital of a company;

- (c) a charge on shares of a subsidiary of a company which are owned by the company;
- (d) a charge or an assignment created or evidenced by an instrument which if executed by an individual, would require registration as a bill of sale;
- (e) a charge on land wherever situate or any interest therein;
- (f) a charge on book debts of the company;
- (g) a floating charge on the undertaking or property of a company;
- (h) a charge on calls made but not paid;
- (i) a charge on a ship or aircraft or any share in a ship or aircraft; and
- (j) a charge on goodwill, on a patent or licence under a patent, on a trade mark, or on a copyright or a licence under a copyright.

(4) Where a charge created in Singapore affects property outside Singapore, the instrument creating or purporting to create the charge or a copy thereof accompanied by the verifying affidavit may be lodged for registration under and in accordance with subsection (1) notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the place in which the property is situate.

(5) When a series of debentures containing or giving by reference to any other instrument any charge to the benefit of which the debenture holders of that series are entitled equally is created by a company, it shall be sufficient if there are lodged with the Registrar for registration within 30 days after the execution of the instrument containing the charge, or if there is no such instrument after the execution of the first debenture of the series, a statement containing the following particulars:

- (a) the total amount secured by the whole series;
- (b) the dates of the resolutions authorising the issue of the series and the date of the covering instrument, if any, by which the security is created or defined;
- (c) a general description of the property charged; and

- (d) the names of the trustee, if any, for the debenture holders,
together with —
- (e) the instrument containing the charge;
 - (f) a copy of the instrument and an affidavit verifying the execution of the instrument and verifying the copy to be a true copy; or
 - (g) if there is no such instrument, a copy of one of the debentures of the series and an affidavit verifying the copy to be a true copy.

(6) For the purposes of subsection (5), where more than one issue is made of debentures in the series, there shall be lodged within 30 days after each issue particulars of the date and amount of each issue, but an omission to do so shall not affect the validity of the debentures issued.

(7) Where any commission, allowance or discount has been paid or made either directly or indirectly by a company to any person in consideration of his (whether absolutely or conditionally) subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any debentures the particulars required to be lodged under this section shall include particulars as to the amount or rate per cent of the commission, allowance or discount so paid or made, but omission to do so shall not affect the validity of the debentures issued.

(8) The deposit of any debentures as security for any debt of the company shall not for the purposes of subsection (7) be treated as the issue of the debentures at a discount.

(9) No charge or assignment to which this section applies (except a charge or assignment relating to land) need be filed or registered under any other written law.

(10) Where a charge requiring registration under this section is created before the lapse of 30 days after the creation of a prior unregistered charge, and comprises all or any part of the property comprised in the prior charge, and the subsequent charge is given as a security for the same debt as is secured by the prior charge, or any part of that debt, then to the extent to which the subsequent charge is a security for the same debt or part thereof, and so far as respects the property comprised in the prior charge, the subsequent charge shall not be operative or have any

validity unless it is proved to the satisfaction of the Court that it was given in good faith for the purpose of correcting some material error in the prior charge or under other proper circumstances and not for the purposes of avoiding or evading the provisions of this Division. [108

132.—(1) Documents and particulars required to be lodged for registration in accordance with section 131 may be lodged for registration by the company concerned or by any person interested in the documents, but if default is made in complying with that section the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

Duty to register charges.
U.K. s. 96.
Aust. s. 101.
15/84.

(2) Where registration is effected by some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him on the registration. [109

133.—(1) Where a company acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Division or, where a foreign company becomes registered in Singapore and has prior to such registration created a charge which if it had been created by the company while it was registered in Singapore would have been required to be registered under this Division or, where a foreign company becomes registered in Singapore and has prior to such registration acquired property which is subject to a charge of any such kind as would if it had been created by the company after the acquisition and while it was registered in Singapore have been required to be registered under this Division, the company shall cause a statement of the prescribed particulars and the instrument by which the charge was created or is evidenced or a copy thereof accompanied by an affidavit containing such particulars as are prescribed, and where a copy is lodged also verifying it as a true copy thereof, to be lodged with the Registrar for registration within 30 days after the date on which the acquisition is completed or the date of the registration of the company in Singapore, as the case may be.

Duty of company to register charges existing on property acquired.
U.K. s. 97.
Aust. s. 102.

(2) If default is made in complying with this section, the company or the foreign company and every officer of the

15/84.

company or foreign company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty. [110

Register of charges to be kept by Registrar.
U.K. s. 98.
Aust. s. 103.

134.—(1) The Registrar shall keep a register of all the charges lodged for registration under this Division and shall enter in the register with respect to those charges the following particulars:

- (a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are required to be contained in a statement furnished under section 131 (5); and
- (b) in the case of any other charge —
 - (i) if the charge is a charge created by the company, the date of its creation, and if the charge was a charge existing on property acquired by the company the date of the acquisition of the property;
 - (ii) the amount secured by the charge;
 - (iii) a description sufficient to identify the property charged; and
 - (iv) the name of the person entitled to the charge.

(2) The Registrar shall issue a certificate of every registration stating, if applicable, the amount secured by the charge and the certificate shall be conclusive evidence that the requirements as to registration have been complied with. [111

Endorsement of certificate of registration on debentures.
U.K. s. 99.
Aust. s. 104.

135.—(1) The company shall cause to be endorsed on every debenture forming one of a series of debentures, or certificate of debenture stock which is issued by the company and the payment of which is secured by a charge so registered —

- (a) a copy of the certificate of registration; or
- (b) a statement that the registration has been effected and the date of registration.

(2) Subsection (1) shall not apply to any debenture or certificate of debenture stock which has been issued by the company before the charge was registered.

(3) Every person who knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock which is not endorsed as required by this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000. [112]

136.—(1) Where, with respect to any registered charge —

- (a) the debt for which the charge was given has been paid or satisfied in whole or in part; or
- (b) the property or undertaking charged or any part thereof has been released from the charge or has ceased to form part of the company's property or undertaking of the company concerned,

the company may lodge with the Registrar in the prescribed form a memorandum of satisfaction in whole or in part, or of the fact that the property or undertaking or any part thereof has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be, and the Registrar shall enter particulars of that memorandum in the register.

(2) The memorandum must be supported by evidence sufficient to satisfy the Registrar of the payment, satisfaction, release or ceasing referred to in subsection (1).

[113]

137. The Court, on being satisfied that the omission to register a charge (whether under this or any corresponding previous written law) within the time required or that the omission or mis-statement of any particular with respect to any such charge or in a memorandum of satisfaction was accidental or due to inadvertence or to some other sufficient cause or is not of a nature to prejudice the position of creditors or shareholders or that on other grounds it is just and equitable to grant relief, may on the application of the company or any person interested and on such terms and conditions as seem to the Court just and expedient (including a term or condition that the extension or rectification is to be without prejudice to any liability already incurred by the company or any of its officers in respect of the default) order that the time for registration be extended or that the omission or mis-statement be rectified. [114]

15/84.
Entries of satisfaction and release of property from charge. U.K. s. 100. Aust. s. 105.

Extension of time and rectification of register of charges. U.K. s. 101. Aust. s. 106.

Company to keep copies of charging instruments and register of charges. U.K. ss. 103-105. Aust. s. 107.

138.—(1) Every company shall cause a copy of every instrument creating any charge requiring registration under this Division to be kept at the registered office of the company but in the case of a series of debentures the keeping of a copy of one debenture of the series shall be sufficient for the purposes of this subsection.

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

(3) The copies of instruments and the register of charges kept in pursuance of this section shall be open to the inspection of any creditor or member of the company without fee, and the register of charges shall also be open to the inspection of any other person on payment of such fee not exceeding \$2 for each inspection as is fixed by the company.

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(4) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty.

[115

Documents made out of Singapore. Aust. s. 108.

139. Where under this Division an instrument, deed, statement or other document is required to be lodged with the Registrar within a specified time, the time so specified shall, by force of this section, in relation to an instrument, deed, statement or other document executed or made in a place out of Singapore, be extended by 7 days or such further periods as the Registrar may from time to time allow.

[116

Charges, etc., created before commencement of Act. Aust. s. 109.

140. Except as is otherwise expressly provided this Division shall apply to any charge that at the commencement of this Act was registrable under any of the repealed written laws but which at that date was not registered under any of those laws.

[117

141. A reference in this Division to a company shall be read as including a reference to a foreign company registered under Division 2 of Part XI, but nothing in this Division applies to a charge on property outside Singapore of such foreign company. [118]

Application
of Division.
Aust. s. 110.
15/84.

PART V

MANAGEMENT AND ADMINISTRATION

Division 1 — Office and name

142.—(1) A company shall as from the date of its incorporation have a registered office within Singapore to which all communications and notices may be addressed and which shall be open and accessible to the public for not less than 3 hours during ordinary business hours on each day, Saturdays, weekly and public holidays excepted.

Registered
office of
company.
U.K. s. 107.
Aust. s. 111.
15/84.

(2) If default is made in complying with subsection (1), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty. [119]

15/84.

143.—(1) Notice in the prescribed form of the situation of the registered office, the days and hours during which it is open and accessible to the public, shall, in the case of a proposed company, be lodged with the Registrar together with its memorandum and its articles, if any, at the time of lodgment for the incorporation of the proposed company and in the case of any subsequent change of the particulars therein be so lodged within one month of any such change, but no notice of the days and hours during which the office is open and accessible to the public shall be required if the office is open for at least 5 hours during ordinary business hours on each day, Saturdays, weekly and public holidays excepted.

Office hours.
U.K. s. 107.
Aust. s. 112.
15/84.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

Penalty.
15/84.

[120]

Publication
of name.
U.K. s. 108.
Aust. s. 113.

144.—(1) The name of a company shall (whether or not it is carrying on business under a business name) appear in legible romanised letters on —

- (a) its seal; and
- (b) all business letters, statements of account, invoices, official notices, publications, bills of exchange, promissory notes, indorsements, cheques, orders, receipts and letters of credit of or purporting to be issued or signed by or on behalf of the company,

and if default is made in complying with this subsection the company shall be guilty of an offence.

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

- (a) uses or authorises the use of any seal purporting to be a seal of the company whereon its name does not so appear;
- (b) issues or authorises the issue of any business letter, statement of account, invoice or official notice or publication of the company wherein its name is not so mentioned; or
- (c) signs, issues or authorises to be signed or issued on behalf of the company any bill of exchange, promissory note, cheque or other negotiable instrument or any indorsement, order, receipt or letter of credit wherein its name is not so mentioned,

he shall be guilty of an offence, and where he has signed, issued or authorised to be signed or issued on behalf of the company any bill of exchange, promissory note or other negotiable instrument or any indorsement thereon or order wherein that name is not so mentioned, he shall in addition be liable to the holder of the instrument or order for the amount due thereon unless it is paid by the company.

Name to be
displayed on
all offices.
15/84.

(3) Every company shall paint or affix and keep painted or affixed on the outside of every office or place in which its business is carried on, in a prominent position in romanised letters easily legible its name, and also, in the case of the registered office, the words “Registered Office” and if it fails to do so the company shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

Division 2 — Directors and officers

145.—(1) Every company shall have at least two directors one of whom shall be ordinarily resident in Singapore. Directors.
U.K. s. 176.
Aust. s. 114.

(2) No person other than a natural person of full age and capacity shall be a director of a company.

(3) The first directors of a company shall be named in the memorandum or articles of the company.

(4) Any provision in the memorandum or articles of a company which was in force immediately before the commencement of this Act and which operated to constitute a corporation as a director of the company shall be read and construed as if it authorised that corporation to appoint a natural person to be a director of that company.

(5) On the commencement of this Act any corporation which holds office as a director of a company shall cease to hold office and the vacancy may be filled as a casual vacancy in accordance with the articles of the company.

(6) Notwithstanding anything in this Act or in the memorandum or articles of a company or in any agreement with a company, a director of a company shall not resign or vacate his office unless there are remaining in the company at least two directors, one of whom shall be ordinarily resident in Singapore and any purported resignation or vacation of office in breach of this section shall be deemed to be invalid. 15/84.

(7) Subsection (6) shall not apply where a director of a company is required to resign or vacate his office if he has not within the period referred to in section 147 (1) obtained his qualification or by virtue of his disqualification under section 148, 149, 154 or 155 of this Act or section 28 (1) (b) of the Insurance Act, or sections 58, 59 and 60 of the Banking Act or sections 35 and 37 of the Finance Companies Act. 15/84.
Cap. 142.
Cap. 19.
Cap. 108.

[122]

146.—(1) A person shall not be named as a director or proposed director in the memorandum or articles of a company or in the register of directors, managers and secretaries of a company or in a prospectus or a statement in lieu of prospectus, unless before the registration of the memorandum or articles or the lodging of any return in the prescribed form containing the particulars required to be Restrictions
on appoint-
ment or
advertise-
ment of
director.
U.K. s. 181.
Aust. s. 115.
15/84.

specified in the register of directors, managers and secretaries or the issue of the prospectus or the lodging of the statement in lieu of prospectus, as the case may be, he has by himself or by his agent authorised in writing for the purpose signed before a notary public, solicitor or an approved company auditor and lodged with the Registrar a consent in writing to act as a director and has —

- (a) signed the memorandum for a number of shares not less than his qualification, if any;
- (b) signed and lodged with the Registrar an undertaking in writing to take from the company and pay for his qualification shares, if any;
- (c) made and lodged with the Registrar a statutory declaration to the effect that a number of shares, not less than the qualification, if any, is registered in his name; or
- (d) in the case of a company formed or intended to be formed by way of reconstruction of another corporation or group of corporations or to acquire the shares in another corporation or group of corporations, made and lodged with the Registrar a statutory declaration that he was a shareholder in that other corporation or in one or more of the corporations of that group, and that as a shareholder he will be entitled to receive and have registered in his name a number of shares not less than his qualification, by virtue of the terms of an agreement relating to the reconstruction.

(2) Where a person has signed and lodged an undertaking to take and pay for his qualification shares, he shall, as regards those shares, be in the same position as if he had signed the memorandum for that number of shares.

(3) Subsections (1) and (2) (other than the provisions relating to the signing of a consent to act as director) shall not apply to —

- (a) a company not having a share capital;
- (b) a private company; or
- (c) a prospectus or a statement in lieu of prospectus issued or lodged with the Registrar by or on behalf of a company or to articles adopted by a

company after the expiration of one year from the date on which the company was entitled to commence business.

(4) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 and also to a default penalty.

[123

147.—(1) Without affecting the operation of sections 145 and 146, every director, who is by the articles required to hold a specified share qualification and who is not already qualified, shall obtain his qualification within two months after his appointment or such shorter period as is fixed by the articles.

15/84.
Qualification
of director.
U.K. s. 182.
Aust. s. 116.

(2) Unless otherwise provided by the articles, the qualification of any director of a company must be held by him solely and not as one of several joint holders.

(3) A director shall vacate his office if he has not within the period referred to in subsection (1) obtained his qualification or if after so obtaining it he ceases at any time to hold his qualification.

(4) Any person who fails to comply with subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$4,000 and also to a default penalty.

(5) A person vacating office under this section shall be incapable of being reappointed as director until he has obtained his qualification.

[124

148.—(1) Every person who, being an undischarged bankrupt (whether he was adjudged bankrupt by a Singapore Court or a foreign court having jurisdiction in bankruptcy), acts as director of, or directly or indirectly takes part in or is concerned in the management of, any corporation, except with the leave of the Court, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both.

Disqualifica-
tions of
undischarged
bankrupts.
U.K. s. 187.
Aust. s. 117.
15/84.

(2) The Court shall not give leave under this section unless notice of intention to apply therefor has been served on the Minister and on the Official Receiver and the

Minister and the Official Receiver or either of them may be represented at the hearing of and may oppose the granting of the application. [125

Disqualifica-
tion of
unfit
directors of
insolvent
companies.
15/84.

149.—(1) Where a person —

- (a) is or has been a director of a company which has at any time gone into liquidation (whether while he was a director or at any time within 3 years of his ceasing to be a director) and was insolvent at that time; and
- (b) is or has been a director of another such company which has gone into liquidation and was insolvent at that time within 5 years of the date on which the first-mentioned company went into liquidation,

and that person within a period of 5 years after the other such company referred to in paragraph (b) has gone into liquidation, without the leave of the Court, is a director or promoter of, or is in any way whether directly or indirectly concerned or takes part in the management of a company, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) The Court shall not give leave under this section unless —

- (a) notice of intention to apply therefor has been served on the Minister and on the Official Receiver and the Minister and the Official Receiver or either of them may be represented at the hearing of, and may oppose the granting of, the application; and
- (b) the applicant has satisfied the Court that his conduct as a director of any of those companies referred to in subsection (1) did not make him unfit to be concerned in the management of a company.

(3) In this section, company includes an unregistered company within the meaning of section 350 (1), and, for the purposes of this section, a company has gone into liquidation if it is wound up by the Court, on the date of the winding-up order and, in any other case, on the date of the passing of the resolution for voluntary winding up.

(4) Where a director is in breach of subsection (1), a certificate of the Official Receiver stating that a company has gone into liquidation shall in all courts be received as prima facie evidence of the facts stated therein.

(5) Subsection (1) shall not apply unless the two companies therein mentioned have gone into liquidation after the date of commencement of this section; and the conduct to which a Court shall have regard under subsection (2) (b) does not include conduct as a director of a company that has gone into liquidation before that date. [125A

150.—(1) At a general meeting of a public company, a motion for the appointment of two or more persons as directors by a single resolution shall not be made unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.

Appointment of directors to be voted on individually.
U.K. s. 183.
Aust. s. 118.

(2) A resolution passed in pursuance of a motion made in contravention of this section shall be void, whether or not its being so moved was objected to at the time.

(3) Where a resolution pursuant to a motion made in contravention of this section is passed no provision for the automatic reappointment of retiring directors in default of another appointment shall apply.

(4) For the purposes of this section, a motion for approving a person's appointment or for nominating a person for appointment shall be treated as a motion for his appointment.

(5) Nothing in this section shall —

(a) apply to a resolution altering the company's articles;

(b) prevent the election of two or more directors by ballot or poll. [126

151. The acts of a director or manager or secretary shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification. [127

Validity of acts of directors and officers.
U.K. s. 180.
Aust. s. 119.

152.—(1) A public company may by ordinary resolution remove a director before the expiration of his period of office, notwithstanding anything in its memorandum or

Removal of directors.
U.K. s. 184.
Aust. s. 120.

articles or in any agreement between it and him but where any director so removed was appointed to represent the interests of any particular class of shareholders or debenture holders the resolution to remove him shall not take effect until his successor has been appointed.

(2) Special notice shall be required of any resolution to remove a director under this section or to appoint some person in place of a director so removed at the meeting at which he is removed, and on receipt of notice of an intended resolution to remove a director under this section the company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting.

(3) Where notice is given pursuant to subsection (2) and the director concerned makes with respect thereto representations in writing to the company, not exceeding a reasonable length, and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so —

(a) in any notice of the resolution given to members of the company state the fact of the representations having been made; and

(b) send a copy of the representations to every member of the company to whom notice of the meeting is sent, whether before or after receipt of the representations by the company,

and if a copy of the representations is not so sent because they were received too late or because of the company's default the director may, without prejudice to his right to be heard orally, require that the representations shall be read out at the meeting.

(4) Notwithstanding subsections (1), (2) and (3) copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter and the Court may order the company's costs on an application under this section to be paid in whole or in part by the director, notwithstanding that he is not a party to the application.

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

(6) A person appointed director in place of a person removed under this section shall be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become a director on the day on which the person in whose place he is appointed was last appointed a director.

(7) Nothing in subsections (1) to (6) shall be taken as depriving a person removed thereunder of compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director or as derogating from any power to remove a director which may exist apart from this section.

(8) A director of a public company shall not be removed by, or be required to vacate his office by reason of, any resolution, request or notice of the directors or any of them notwithstanding anything in the articles or any agreement.

[128

153.—(1) Subject to this section but notwithstanding anything in the memorandum or articles of the company, no person of or over the age of 70 years shall be appointed or act as a director of a public company or of a subsidiary of a public company.

Age limit for
directors.
U.K. s. 185.
Aust. s. 121.

(2) The office of a director of a public company or of a subsidiary of a public company shall become vacant at the conclusion of the annual general meeting commencing next after he attains the age of 70 years.

(3) Any act done by a person as director shall be valid notwithstanding that it is afterwards discovered that there was a defect in his appointment or that his appointment had terminated by virtue of subsection (2).

(4) Where the office of a director has become vacant by virtue of subsection (2) no provision for the automatic reappointment of retiring directors in default of another appointment shall apply in relation to that director.

(5) If any such vacancy has not been filled at the meeting at which the office became vacant the office may be filled as a casual vacancy.

(6) Notwithstanding anything in this section a person of or over the age of 70 years may by a resolution of which no shorter notice than that required to be given to the members of the company of an annual general meeting has been duly given, passed by a majority of not less than three-fourths of such members of the company as being entitled to do so vote in person or, where proxies are allowed, by proxy, at a general meeting of that company, be appointed or re-appointed as a director of that company to hold office until the next annual general meeting of the company or be authorised to continue in office as a director until the next annual general meeting of the company.

(7) Section 179 relating to the demanding of a poll and the holding of a poll shall apply to a resolution under this section.

(8) Nothing in this section shall limit or affect the operation of any provision of the memorandum or articles of a company preventing any person from being appointed a director or requiring any director to vacate his office at any age less than 70 years.

(9) The provisions of the articles of a company relating to the rotation and retirement of directors shall not apply to a director who is appointed or re-appointed pursuant to this section but such provisions of the articles shall continue to apply to all other directors of the company. [129

Disqualifica-
tion to act
as director
on conviction
for certain
offences.
U.K. s. 188.
Aust. s. 122.
15/84.

154.—(1) Where a person is convicted whether within or without Singapore —

- (a) of any offence in connection with the promotion, formation or management of a corporation;
- (b) of any offence involving fraud or dishonesty punishable on conviction with imprisonment for 3 months or more; or
- (c) of any offence under section 157 or 339,

and that person, within a period of 5 years after his conviction or, if he is sentenced to imprisonment, after his release from prison, without the leave of the Court is a director or promoter of or is in any way whether directly or indirectly concerned or takes part in the management of a company he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 6 months or to both.

(2) A person intending to apply for the leave of the Court under this section shall give to the Minister not less than 14 days' notice of his intention so to apply.

(3) On the hearing of any application under this section the Minister may be represented at the hearing of and may oppose the granting of the application. [130

155.—(1) Where a person has been persistently in default in relation to relevant requirements of this Act and that person, within a period of 5 years after he has last been adjudged guilty of any offence or has had made against him an order under section 13 or 399 in relation to any such relevant requirements of this Act, without the leave of the Court, is a director or promoter of, or is in any way directly or indirectly concerned or takes part in the management of a company, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

Disqualifi-
cation for
persistent
default in
relation to
delivery of
documents to
Registrar.
15/84.

(2) Any provision of this Act which requires any return, account or other document to be filed with, delivered or sent, or notice of any matter to be given, to the Registrar is a relevant requirement of this Act for the purposes of this section.

(3) For the purposes of this section, the fact that a person has been persistently in default in relation to relevant requirements of this Act may, subject to subsection (8), be conclusively proved by showing that he has been adjudged guilty of 3 or more offences in relation to any such requirements or has had 3 or more orders made against him under section 13 or 399 in relation to those requirements.

(4) A person shall be treated as being adjudged guilty of 3 or more offences in relation to any such relevant requirements of this Act for the purpose of subsection (3) if he is convicted of any 3 or more offences by virtue of any contravention of, or failure to comply with, any such requirements (whether on his own part or on the part of any company).

(5) For the purpose of this section a conviction for an offence under section 154 (1) (a) shall not be treated as an offence in relation to a relevant requirement of this Act.

(6) Where a person has had a third or subsequent order made against him under section 13 or 399 and by virtue of the operation of this section that person is disqualified from being a director or promoter of or from being in any way directly or indirectly concerned or taking part in the management of a company, nothing in this section shall be construed as preventing that person from complying with the order of the Court and for this purpose he shall be deemed to have the same status, powers and duties as he had at the time the act, matter or thing should have been done.

(7) For the purpose of this section, a certificate of the Registrar stating that a person has been adjudged guilty of 3 or more offences or has had made against him 3 or more orders under section 13 or 399 in relation to the requirements of this Act shall in all courts be received as prima facie evidence of the facts stated therein.

(8) No account shall be taken for the purposes of this section of any offence which was committed or, in the case of a continuing offence, began before the date on which this section comes into operation.

(9) A person intending to apply for leave of the Court under this section shall give to the Minister not less than 14 days' notice of his intention so to apply.

(10) On the hearing of any application under this section, the Minister may be represented and may oppose the granting of the application.

(11) In this section, company includes an unregistered company within the meaning of section 350 (1). [130A

Disclosure of
interests in
contracts,
property,
offices, etc.
U.K. s. 199.
Aust. s. 123.

156.—(1) Subject to this section, every director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company shall as soon as practicable after the relevant facts have come to his knowledge declare the nature of his interest at a meeting of the directors of the company.

(2) The requirements of subsection (1) shall not apply in any case where the interest of the director consists only of being a member or creditor of a corporation which is interested in a contract or proposed contract with the first-mentioned company if the interest of the director may properly be regarded as not being a material interest.

(3) A director of a company shall not be deemed to be interested or to have been at any time interested in any contract or proposed contract by reason only —

- (a) in a case where the contract or proposed contract relates to any loan to the company — that he has guaranteed or joined in guaranteeing the repayment of the loan or any part of the loan; or
- (b) in a case where the contract or proposed contract has been or will be made with or for the benefit of or on behalf of a corporation which by virtue of section 6 is deemed to be related to the company — that he is a director of that corporation,

and this subsection shall have effect not only for the purposes of this Act but also for the purposes of any other law, but shall not affect the operation of any provision in the articles of the company.

(4) For the purposes of subsection (1), a general notice given to the directors of a company by a director to the effect that he is an officer or member of a specified corporation or a member of a specified firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that corporation or firm shall be deemed to be a sufficient declaration of interest in relation to any contract so made if it specifies the nature and extent of his interest in the specified corporation or firm and his interest is not different in nature or greater in extent than the nature and extent so specified in the general notice at the time any contract is so made, but no such notice shall be of effect unless either it is given at a meeting of the directors or the director takes reasonable steps to ensure that it is brought up and read at the next meeting of the directors after it is given.

(5) Every director of a company who holds any office or possesses any property whereby whether directly or indirectly duties or interests might be created in conflict with his duties or interests as director shall declare at a meeting of the directors of the company the fact and the nature, character and extent of the conflict.

(6) The declaration shall be made at the first meeting of the directors held —

- (a) after he becomes a director; or

(b) (if already a director) after he commenced to hold the office or to possess the property,
as the case requires.

(7) The secretary of the company shall record every declaration under this section in the minutes of the meeting at which it was made.

10/74.

(8) For the purposes of this section, an interest of a member of a director's family shall be treated as an interest of the director.

(9) Except as provided in subsection (3), this section shall be in addition to and not in derogation of the operation of any rule of law or any provision in the articles restricting a director from having any interest in contracts with the company or from holding offices or possessing properties involving duties or interests in conflict with his duties or interests as a director.

15/84.

(10) Any director of a company who fails to comply with any of the provisions of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding one year. [131

As to the
duty and
liability of
officers.
Aust. s. 124.
62/70.

157.—(1) A director shall at all times act honestly and use reasonable diligence in the discharge of the duties of his office.

(2) An officer or agent of a company shall not make improper use of any information acquired by virtue of his position as an officer or agent of the company to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the company.

15/84.

(3) An officer or agent who commits a breach of any of the provisions of this section shall be —

(a) liable to the company for any profit made by him or for any damage suffered by the company as a result of the breach of any of those provisions; and

(b) guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding one year.

(4) This section is in addition to and not in derogation of any other written law or rule of law relating to the duty or liability of directors or officers of a company.

(5) In this section —

“officer” includes a person who at any time has been an officer of the company;

“agent” includes a banker, solicitor or auditor of the company and any person who at any time has been a banker, solicitor or auditor of the company. [132

158. (*Repealed by Act 15/86*).

159. The matters to which the directors of a company are entitled to have regard in exercising their powers shall include —

(a) the interests of the company’s employees generally, as well as the interests of its members; and

(b) the rulings of the Securities Industry Council on the interpretation of the principles and rules of and the practice to be followed under the Singapore Code on Take-overs and Mergers. [132B

Power of directors to have regard to interest of its employees, members and rulings of Securities Industry Council. 10/74.

160.—(1) Notwithstanding anything in a company’s memorandum or articles, the directors shall not carry into effect any proposals for disposing of the whole or substantially the whole of the company’s undertaking or property unless those proposals have been approved by the company in general meeting.

Approval of company required for disposal by directors of company’s undertaking or property. 10/74.

(2) The Court may, on the application of any member of the company, restrain the directors from entering into a transaction in contravention of subsection (1).

(3) A transaction entered into in contravention of subsection (1) shall, in favour of any person dealing with the company for valuable consideration and without actual notice of the contravention, be as valid as if that subsection had been complied with.

(4) This section shall not apply to proposals for disposing of the whole or substantially the whole of the company’s undertaking or property made by a receiver and manager of any part of the undertaking or property of the company appointed under a power contained in any instrument or a

liquidator of a company appointed in a voluntary winding up. [132c

Approval of company required for issue of shares by directors.
10/74
15/84.

161.—(1) Notwithstanding anything in a company's memorandum or articles, the directors shall not, without the prior approval of the company in general meeting, exercise any power of the company to issue shares.

(2) Approval for the purposes of this section may be confined to a particular exercise of that power or may apply to the exercise of that power generally; and any such approval may be unconditional or subject to conditions.

(3) Any approval for the purposes of this section shall continue in force until —

(a) the conclusion of the annual general meeting commencing next after the date on which the approval was given; or

(b) the expiration of the period within which the next annual general meeting after that date is required by law to be held,

whichever is the earlier; but any approval may be previously revoked or varied by the company in general meeting.

(4) The directors may issue shares notwithstanding that an approval for the purposes of this section has ceased to be in force if the shares are issued in pursuance of an offer, agreement or option made or granted by them while the approval was in force and they were authorised by the approval to make or grant an offer, agreement or option which would or might require shares to be issued after the expiration of the approval.

(5) Section 186 shall apply to any resolution whereby an approval is given for the purposes of this section.

(6) Any issue of shares made by a company in contravention of this section shall be void and consideration given for the shares shall be recoverable accordingly.

(7) Any director who knowingly contravenes, or permits or authorises the contravention of, this section with respect to any issue of shares shall be liable to compensate the company and the person to whom the shares were issued for any loss, damages or costs which the company or that person may have sustained or incurred thereby; but no

proceedings to recover any such loss, damages or costs shall be commenced after the expiration of two years from the date of the issue. [132D

162.—(1) A company (other than an exempt private company) shall not make a loan to a director of the company or of a company which by virtue of section 6 is deemed to be related to that company, or enter into any guarantee or provide any security in connection with a loan made to such a director by any other person but nothing in this section shall apply —

Loans to directors.
U.K. s. 190.
Aust. s. 125.
15/84.

- (a) subject to subsection (2), to anything done to provide such a director with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company;
- (b) to anything done to provide such a director who is engaged in the full-time employment of the company or of a corporation that is deemed to be related to that company, as the case may be, with funds to meet expenditure incurred or to be incurred by him in purchasing or otherwise acquiring a home;
- (c) to any loan made to such a director who is engaged in the full-time employment of the company or of a corporation that is deemed to be related to that company, as the case may be, where the company has at a general meeting approved of a scheme for the making of loans to employees of the company and the loan is in accordance with that scheme; or
- (d) to any loan made to such director in the ordinary course of business of a company whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons if the activities of that company are regulated by any written law relating to banking, finance companies or insurance or are subject to supervision by the Monetary Authority of Singapore.

(2) Subsection (1) (a) or (b) shall not authorise the making of any loan, or the entering into any guarantee, or the provision of any security except —

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

(b) on condition that, if the approval of the company is not given as aforesaid at or before the next following annual general meeting, the loan shall be repaid or the liability under the guarantee or security shall be discharged, as the case may be, within 6 months from the conclusion of that meeting.

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

15/84.

(4) Where a company contravenes this section any director who authorises the making of any loan, the entering into of any guarantee or the providing of any security contrary to this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years.

(5) Nothing in this section shall operate to prevent the company from recovering the amount of any loan or amount for which it becomes liable under any guarantee entered into or in respect of any security given contrary to this section.

15/84.

(6) For the purpose of subsection (1), the reference to director therein includes a reference to his spouse, son, adopted son, step-son, daughter, adopted daughter and step-daughter.

[133

Prohibition
of loans to
persons
connected
with directors
of lending
company.
10/74
15/84.

163.—(1) Subject to this section, it shall not be lawful for a company (other than an exempt private company) —

(a) to make a loan to another company; or

(b) to enter into any guarantee or provide any security in connection with a loan made to another company by a person other than the first-mentioned company,

if a director or directors of the first-mentioned company is or together are interested in shares in the other company of a nominal value equal to one-fifth or more of the nominal value of its equity share capital.

(2) Subsection (1) shall extend to apply to a loan, ^{15/84.} guarantee or security in connection with a loan made by a company to another company where such company is incorporated outside Singapore, if a director or directors of the first-mentioned company —

- (a) is or together are interested in shares in the other company of the nominal value described in subsection (1); or
- (b) in a case where the other company does not have a share capital, exercises or together exercise control over the other company whether by reason of having the power to appoint directors or otherwise.

(3) For the purposes of this section — ^{15/84.}

- (a) where a company makes a loan to another company or gives a guarantee or provides security in connection with a loan made to another company, a director or directors of the first-mentioned company shall not be taken to have an interest in shares in that other company by reason only that the first-mentioned company has an interest in shares in that other company and a director or directors have an interest in shares in the first-mentioned company;
- (b) “interest in shares” has the meaning assigned to that expression in section 7.

(4) This section shall not apply — ^{15/84.}

- (a) to anything done by a company where the other company is its subsidiary or holding company or a subsidiary of its holding company; or
- (b) to a company, whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons, to anything done by the company in the ordinary course of that business if the activities of that company are regulated by any written law

relating to banking, finance companies or insurance or are subject to supervision by the Monetary Authority of Singapore.

15/84. (5) For the purposes of this section, an interest of a member of a director's family shall be treated as the interest of the director and the words "member of a director's family" shall include his spouse, son, adopted son, step-son, daughter, adopted daughter and step-daughter.

15/84. (6) Nothing in this section shall operate to prevent the recovery of any loan or the enforcement of any guarantee or security whether made or given by the company or any other person.

15/84. (7) Where a company contravenes this section, any director who authorises the making of any loan, the entering into of any guarantee or the providing of any security contrary to this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years. [133A

Register of
director's
share
holdings.
49/73.

164.—(1) A company shall keep a register showing with respect to each director of the company particulars of —

- (a) shares in that company or in a related corporation, being shares of which the director is a registered holder or in which he has an interest and the nature and extent of that interest;
- (b) debentures of or participatory interests made available by the company or a related corporation which are held by the director or in which he has an interest and the nature and extent of that interest;
- (c) rights or options of the director or of the director and another person or other persons in respect of the acquisition or disposal of shares in the company or a related corporation; and
- (d) contracts to which the director is a party or under which he is entitled to a benefit, being contracts under which a person has a right to call for or to make delivery of shares in the company or in a related corporation.

49/73. (2) A company need not show, in its register with respect to a director, particulars of shares in a related corporation

that is a wholly-owned subsidiary of the company or of another corporation.

(3) A company that is a wholly-owned subsidiary of another company shall be deemed to have complied with this section in relation to a director who is a director of that other company if the particulars required by this section to be shown in the register of the first-mentioned company with respect to the director are shown in the register of the second-mentioned company. ^{49/73.}

(4) For the purposes of subsections (2) and (3) a company is a wholly-owned subsidiary of another company if none of the members of the first-mentioned company is a person other than — ^{49/73.}

- (a) the second-mentioned company;
- (b) a nominee of the second-mentioned company;
- (c) a subsidiary of the second-mentioned company being a subsidiary none of the members of which is a person other than the second-mentioned company or a nominee of the second-mentioned company; or
- (d) a nominee of such a subsidiary.

(5) A company shall, within 3 days after receiving notice from a director under section 165 (1) (a), enter in its register in relation to the director the particulars referred to in subsection (1) including the number and description of shares, debentures, participatory interests, rights, options and contracts to which the notice relates and in respect of shares, debentures, participatory interests, rights or options acquired or contracts entered into after he became a director — ^{49/73.}

- (a) the price or other consideration for the transaction, if any, by reason of which an entry is required to be made under this section; and
- (b) the date of —
 - (i) the agreement for the transaction or, if it is later, the completion of the transaction; or
 - (ii) where there was no transaction, the occurrence of the event by reason of which an entry is required to be made under this section.

- 49/73. (6) A company shall, within 3 days after receiving a notice from a director under section 165 (1) (b), enter in its register the particulars of the change referred to in the notice.
- 49/73. (7) A company is not, by reason of anything done under this section, to be taken for any purpose to have notice of or to be put upon inquiry as to the right of a person or in relation to a share in debenture of or participatory interest made available by the company.
- 49/73. (8) A company shall, subject to this section, keep its register at the registered office of the company and the register shall be open for inspection by a member of the company without charge and by any other person on payment for each inspection of a sum of \$3 or such lesser sum as the company requires.
- 49/73. (9) A person may request a company to furnish him with a copy of its register or any part thereof on payment in advance of a sum of \$1 or such lesser sum as the company requires for every page or part thereof required to be copied and the company shall send the copy to that person within 21 days or such longer period as the Registrar thinks fit after the day on which the request is received by the company.
- 49/73. (10) The Registrar may by notice in writing require a company to send to him within such time as may be specified in the notice a copy of its register or any part thereof.
- 49/73. (11) A company shall produce its register at the commencement of each annual general meeting of the company and keep it open and accessible during the meeting to all persons attending the meeting.
- 49/73. (12) It is a defence to a prosecution for failing to comply with subsection (1) or (5) in respect of particulars relating to a director if the defendant proves that the failure was due to the failure of the director to comply with section 165 with respect to those particulars.
- 49/73. (13) In this section —
- (a) a reference to a participatory interest is a reference to an interest within the meaning of section 107; and
 - (b) a reference to a person who holds or acquires shares, debentures or participatory interests or

an interest in shares, debentures or participatory interests includes a reference to a person who under an option holds or acquires a right to acquire or dispose of a share, debenture or participatory interest or an interest in a share, debenture or participatory interest.

(14) In determining for the purposes of this section ^{49/73.} whether a person has an interest in a debenture or participatory interest, the provisions of section 7, except subsections (1) and (3) thereof, have effect and in applying those provisions a reference to a share shall be read as a reference to a debenture or participatory interest.

(15) For the purposes of the application of this section — ^{49/73.}

(a) a director of a company shall be deemed to hold or have an interest or a right in or over any shares or debentures if a wife or husband of the director (not being herself or himself a director thereof) holds or has an interest or a right in or over any shares or debentures or an infant son or infant daughter of that director (not being himself or herself a director) holds or has an interest in shares or debentures; and

(b) any contract, assignment or right of subscription exercised or made by or grant made to the wife or husband of a director of a company (not being herself or himself a director thereof) shall be deemed to have been entered into or exercised or made or, as the case may be, as having been made to the director; and so shall a contract, assignment or right of subscription entered into exercised or made by or grant made to an infant son or infant daughter of a director of a company (not being himself or herself a director thereof).

(16) In subsection (15), “son” includes step-son and ^{49/73.} adopted son and “daughter” includes step-daughter and adopted daughter.

(17) If default is made in complying with this section the ^{49/73} company and every officer of the company who is in default ^{15/84.} shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 3 years and in the case of a continuing

offence to a further fine of \$1,000 for every day during which the offence continues after conviction. [134

General duty
to make dis-
closure.
49/73.

165.—(1) A director of a company shall give notice in writing to the company —

- (a) of such particulars relating to shares, debentures, participatory interests, rights, options and contracts as are necessary for the purposes of compliance by the first-mentioned company with section 164;
- (b) of particulars of any change in respect of the particulars referred to in paragraph (a) of which notice has been given to the company including the consideration, if any, received as a result of the event giving rise to the change;
- (c) of such events and matters affecting or relating to himself as are necessary for the purposes of compliance by the company with section 173 that are applicable in relation to him; and
- (d) if he is a director of a public company or of a subsidiary of a public company of the date when he attained or will have attained the age of 70 years.

49/73.

(2) A notice under subsection (1) shall be given —

- (a) in the case of a notice under subsection (1) (a), within 24 hours after —
 - (i) 5th October 1973*;
 - (ii) the date on which the director became a director; or
 - (iii) the date on which the director became a registered holder of or acquired an interest in the shares, debentures, participatory interests, rights, options or contracts,
 whichever last occurs;
- (b) in the case of a notice under subsection (1) (b), within 24 hours after the occurrence of the event giving rise to the change referred to in that paragraph; and

*Date of commencement of the Companies (Amendment) Act 1973 (No. 49/73).

(c) in the case of a notice under subsection (1) (d), within 24 hours after —

(i) 5th October 1973*; or

(ii) the date on which the director became a director,

whichever last occurs.

(3) A company shall, within 7 days after it receives a ^{49/73.} notice given under subsection (1), send a copy of the notice to each of the other directors of the company.

(4) It is a defence to a prosecution for failing to comply ^{49/73} with subsection (1) (a) or (b) or with subsection (2) if the ^{15/84.} defendant proves that his failure was due to his not being aware of a fact or occurrence the existence of which was necessary to constitute the offence and that —

(a) he was not so aware on the date of the information or summons; or

(b) he became so aware less than 7 days before the date of the summons.

(5) For the purposes of subsection (4), a person shall ^{49/73.} conclusively be presumed to have been aware at a particular time of a fact or occurrence —

(a) of which he would, if he had acted with reasonable diligence in the conduct of his affairs, have been aware at that time; or

(b) of which a servant or agent of the person, being a servant or agent having duties or acting in relation to his master's or principal's interest or interests in a share in or a debenture of or participatory interest issued by the company concerned, was aware or would, if he had acted with reasonable diligence in the conduct of his master's or principal's affairs, have been aware at that time.

(6) In this section —

^{49/73.}

(a) a reference to a participatory interest is a reference to an interest within the meaning of section 107; and

(b) a reference to a person who holds or acquires shares, debentures or participatory interests or

*Date of commencement of the Companies (Amendment) Act 1973 (No. 49/73).

an interest in shares, debentures or participatory interests includes a reference to a person who under an option holds or acquires a right to acquire a share, debenture, or participatory interest or an interest in a share, debenture or participatory interest.

49/73. (7) In determining for the purposes of this section whether a person has an interest in a debenture or participatory interest, the provisions of section 7, except subsections (1) and (3) thereof, have effect and in applying those provisions a reference to a share shall be read as a reference to a debenture or participatory interest.

49/73. (8) Nothing in section 164 or this section requires a company to enter in its register or requires a director to give notice to the company of matters that are shown in the register kept by the company in accordance with the repealed section 164 as in force immediately before 5th October 1973.

49/73
15/84. (9) Any director who fails to comply with subsection (1) or (2) or any company that fails to comply with subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 3 years and in the case of a continuing offence to a further fine of \$1,000 for every day during which the offence continues after conviction. [135

Duty of director to notify stock exchange of acquisition, etc., of its securities.
Cap. 289.
49/73
10/74.

166.—(1) Where a person is obliged by virtue of section 165 to notify a company of any matter within any period, then, if that matter relates to shares or debentures listed on a stock exchange (as defined in the Securities Industry Act) he shall also be obliged to notify the stock exchange of that matter within the like period; and the stock exchange may publish, in such manner as it may determine, any information received by it under this subsection.

15/84. (2) Any person who fails to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 3 years and in the case of a continuing offence to a further fine of \$1,000 for every day or part thereof during which the offence continues after conviction.

[135A

167.—(1) A company shall not pay a director remuneration (whether as director or otherwise) free of income tax, or otherwise calculated by reference to or varying with the amount of his income tax, or the rate of income tax, except under a contract which was in force before the commencement of this Act, and which provides expressly, and not by reference to the articles, for payment of such remuneration.

Prohibition of tax-free payments to directors.
U.K. s. 189.
Aust. s. 128.

(2) Any provision in a company's articles, or in any contract other than a contract referred to in subsection (1) or in any resolution of a company or of a company's directors for payment to a director of remuneration free of income tax or otherwise calculated by reference to or varying with the amount of his income tax or the rate of income tax shall have effect as if it provided for payment as a gross sum subject to income tax, of the net sum for which it actually provides.

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

(4) Where a company contravenes this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding one year.

15/84.

[136

168.—(1) It shall not be lawful —

(a) for a company to make to any director any payment by way of compensation for loss of office as an officer of the company or of a subsidiary of the company or as consideration for or in connection with his retirement from any such office; or

(b) for any payment to be made to any director of a company in connection with the transfer of the whole or any part of the undertaking or property of the company,

unless particulars with respect to the proposed payment, including the amount thereof, have been disclosed to the members of the company and the proposal has been approved by the company in general meeting and when any such payment has been unlawfully made the amount received by the director shall be deemed to have been received by him in trust for the company.

Payments to director for loss of office, etc.
U.K. ss. 191–194.
Aust. s. 129.

(2) Where such a payment is to be made to a director in connection with the transfer to any person, as a result of an offer made to shareholders, of all or any of the shares in the company, that director shall take all reasonable steps to secure that particulars with respect to the proposed payment, including the amount thereof, shall be included in or sent with any notice of the offer made for their shares which is given to any shareholders, unless those particulars are furnished to the shareholders by virtue of section 213.

(3) A director who fails to comply with subsection (2) and a person who has been properly required by a director to include in or send with any notice under this section the particulars required by that subsection and who fails to do so shall be guilty of an offence, and if the requirements of that subsection are not complied with any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any person who has sold his shares as a result of the offer made.

(4) If in connection with any such transfer the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of the like shares or any valuable consideration is given to any such director, the excess or the money value of the consideration, as the case may be, shall for the purposes of this section, be deemed to have been a payment made to him by way of compensation for loss of office or as consideration for or in connection with his retirement from office.

(5) Any reference in this section to payments to any director of a company by way of compensation for loss of office or as consideration for or in connection with his retirement from office shall not include —

- (a) any payment under an agreement entered into before 1st January 1967;
- (b) any payment under an agreement particulars of which have been disclosed to and approved by special resolution of the company;
- (c) any bona fide payment by way of damages for breach of contract;
- (d) any bona fide payment by way of pension or lump sum payment in respect of past services,

As to
payments to
directors.

including any superannuation or retiring allowance, superannuation gratuity or similar payment, where the value or amount of the pension or payment, except in so far as it is attributable to contributions made by the director, does not exceed the total emoluments of the director in the 3 years immediately preceding his retirement or death; or

- (e) any payment to a director pursuant to an agreement made between the company and him before he became a director of the company as the consideration or part of the consideration for the director agreeing to serve the company as a director.

(6) This section shall be in addition to and not in derogation of any rule of law requiring disclosure to be made with respect to any such payments or any other like payment.

(7) In this section, "director" includes any person who has at any time been a director of the company or of a corporation which is by virtue of section 6 deemed to be related to the company. [137

169.—(1) A company shall not at any meeting alter or add to its articles so as to provide emoluments or improve emoluments for a director of a company in respect of his office as such unless the provision is approved by a resolution that is not related to other matters.

Alteration of articles so as to improve director's emoluments. 10/74.

(2) In this section, "emoluments" in relation to a director includes fees and percentages, any sums paid by way of expenses allowance in so far as those sums are charged to income tax in Singapore, any contribution paid in respect of a director under any pension scheme and any benefits received by him otherwise than in cash in respect of his services as director. [137A

170.—(1) If in the case of any public company provision is made by the articles or by any agreement entered into between any person and the company for empowering a director or manager of the company to assign his office as such to another person, any such assignment of office shall, notwithstanding anything in that provision, be of no effect until approved by a special resolution of the company.

Provisions as to assignment of office. U.K. s. 204. Aust. s. 130.

(2) This section shall not be construed so as to prevent the appointment by a director, if authorised by the articles and subject thereto, of an alternate or substitute director to act for or on behalf of the director during his inability for any time to act as director. [138]

Secretary.
U.K. ss.
177-179.
Aust. s. 132.

171.—(1) Every company shall have one or more secretaries each of whom shall be a natural person who has his principal or only place of residence in Singapore.

(2) Subsection (1) shall not operate to prevent a corporation which was acting as the secretary of a company immediately before the commencement of this Act from continuing to act as secretary of that company for a period of 12 months after that date.

(3) The secretary or secretaries shall be appointed by the directors and at least one of those secretaries shall be present at the registered office of the company by himself or his agent or clerk on the days and at the hours during which the registered office is to be accessible to the public.

(4) Anything required or authorised to be done by or in relation to the secretary may, if the office is vacant or for any other reason the secretary is not capable of acting, be done by or in relation to any assistant or deputy secretary or, if there is no assistant or deputy secretary capable of acting, by or in relation to any officer of the company authorised generally or specially in that behalf by the directors:

Provided that the office of secretary shall not be left vacant for more than 6 months at any one time.

(5) A provision requiring or authorising a thing to be done by or in relation to a director and the secretary shall not be satisfied by its being done by or in relation to the same person acting both as director and as, or in place of, the secretary. [139]

Provisions
indemnifying
directors or
officers.
U.K. s. 205.
Aust. s. 133.

172.—(1) Any provision, whether in the articles or in any contract with a company or otherwise, for exempting any officer or auditor of the company from, or indemnifying him against, any liability which by law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company, shall be void.

(2) Notwithstanding anything in this section, a company may pursuant to its articles or otherwise indemnify any officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application in relation thereto in which relief is under this Act granted to him by the Court. [140]

173.—(1) Every company shall keep at its registered office a register of its directors, managers, secretaries and auditors.

Register of directors, managers, secretaries and auditors. U.K. s. 200. Aust. s. 134. 15/84.

(2) The register shall contain with respect to each director his consent in writing to appointment as such and shall specify —

- (a) his present full name, any former name, his usual residential address, and his business occupation, if any, and identification, if any; and
- (b) particulars of any other directorships of public companies or companies which are subsidiaries of public companies held by the director, but it shall not be necessary for the register to contain particulars of directorships held by a director in a company that by virtue of section 6 is deemed to be related to that company.

(3) Where a person is a director in one or more subsidiaries of the same holding company it shall be sufficient compliance with subsection (2) if it is disclosed that the person is the holder of one or more directorships in that group of companies and the group may be described by the name of the holding company with the addition of the word “Group”.

(4) The register shall specify with respect to each manager, secretary and auditor his full name, identification and address and other occupation, if any. 15/84.

(5) The register shall be open to the inspection of any member of the company without charge and of any other person on payment of \$2, or such less sum as the company requires, for each inspection.

- (6) The company shall lodge with the Registrar —
- (a) within one month after incorporation, a return in the prescribed form containing the particulars required to be specified in the register;
 - (b) within one month after a person ceases to be, or becomes, a director of the company, a return in the prescribed form notifying the Registrar of the change and containing, with respect to each such director of the company, the particulars required to be specified in the register;
 - (c) within one month after a person becomes a manager, secretary or auditor of the company, a return in the prescribed form notifying the Registrar of that fact and specifying the full name, address and other occupation, if any, of that person;
 - (d) within one month after a person ceases to be a manager, secretary or auditor of the company, a return in the prescribed form notifying the Registrar of that fact; and
 - (e) within one month of any change in the residential address of any director, manager, secretary or auditor a notice in the prescribed form notifying the Registrar of the new residential address of that person.

15/84.

(7) If default is made in complying with any provision of this section the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

15/84.

(8) A certificate of the Registrar stating that from any return lodged with the Registrar pursuant to this section it appears that at any time specified in the certificate any person was a director, manager, secretary or auditor of a specified company shall in all courts and by all persons having power to take evidence for the purposes of this Act, be received as prima facie evidence of the facts stated therein and, for the purposes of this subsection, a person who appears from any return so lodged to be a director, manager, secretary or auditor of a company shall be deemed to continue as such until by a subsequent return so lodged or by a notification of change in the prescribed form so lodged

it appears that he has ceased to be such a director, manager, secretary or auditor.

(9) In this section —

“identification” means, in the case of any person issued with an identity card, the number of the identity card, in the case of a person not issued with an identity card, particulars of the passport or such other similar evidence of identification as is available, if any;

“director” includes an alternate, substitute or local director. [141]

Division 3 — Meetings and proceedings

174.—(1) Every public company that is a limited company and has a share capital shall, within a period of not less than one month and not more than 3 months after the date at which it is entitled to commence business, hold a general meeting of the members of the company to be called the “statutory meeting”.

Statutory meeting and statutory report.
U.K. s. 130.
Aust. s. 135.

(2) The directors shall at least 7 days before the day on which the meeting is to be held forward a report to be called the “statutory report” to every member of the company.

(3) The statutory report shall be certified by not less than two directors of the company and shall state —

- (a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;
- (b) the total amount of cash received by the company in respect of all the shares allotted and so distinguished;
- (c) an abstract of the receipts of the company and of the payments made thereout up to a date within 7 days of the date of the report exhibiting under distinctive headings the receipts 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;

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

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

(5) The directors shall cause a copy of the statutory report and the auditor's report, if any, to be lodged with the Registrar at least 7 days before the date of the statutory meeting.

(6) The directors shall cause a list showing the names and addresses of the members 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 during the continuance of the meeting.

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

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

(9) The meeting may by ordinary resolution appoint a committee or committees of inquiry, and at any adjourned meeting a special resolution may be passed that the company be wound up if, notwithstanding any other provision of this Act, at least 7 days' notice of intention to propose the resolution has been given to every member of the company.

(10) In the event of any default in complying with this section every officer of the company who is in default and every director of the company who fails to take all reasonable steps to secure compliance with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty. [142]

175.—(1) A general meeting of every company to be called the “annual general meeting” shall in addition to any other meeting be held once in every calendar year and not more than 15 months after the holding of the last preceding annual general meeting, but so long as a company holds its first annual general meeting within 18 months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

Annual
general
meeting.
U.K. s. 131.
Aust. s. 136.

(2) Notwithstanding subsection (1), the Registrar, on the application of the company, may, if for any special reason he thinks fit to do so, extend the period of 15 months or 18 months referred to in that subsection, notwithstanding that such period is so extended beyond the calendar year.

(3) Subject to notice being given to all persons entitled to receive notice of the meeting, a general meeting may be held at any time and the company may resolve that any meeting held or summoned to be held shall be the annual general meeting of the company.

(4) If default is made in holding an annual general meeting —

- (a) the company and every officer of the company who is in default shall be guilty of an offence; and
- (b) the Court may on the application of any member order a general meeting to be called. [143]

176.—(1) The directors of a company, notwithstanding anything in its articles, shall, on the requisition of members holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital as at the date of the deposit carries the right of voting at general meetings or, in the case of a company not having a share capital, of members representing not less than 10% of the total voting rights of all members having at that date a right to vote at general meetings, forthwith proceed duly to convene an extraordinary general meeting of the company to be held as soon as practicable but in any case not later than two months after the receipt by the company of the requisition.

Convening of
extraordinary
general
meeting on
requisition.
U.K. s. 132.
Aust. s. 137.

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

(3) If the directors do not within 21 days after the date of the deposit of the requisition proceed to convene a meeting the requisitionists, or any of them representing more than 50% of the total voting rights of all of them, may themselves, in the same manner as nearly as possible as that in which meetings are to be convened by directors convene a meeting, but any meeting so convened shall not be held after the expiration of 3 months from that date.

(4) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors to convene a meeting shall be paid to the requisitionists by the company, and any sum so paid 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.

(5) A meeting at which a special resolution is to be proposed shall be deemed not to be duly convened by the directors if they do not give such notice thereof as is required by this Act in the case of special resolutions.

[144

Calling of
meetings.
U.K. ss. 133,
134.
Aust. s. 138.

177.—(1) Two or more members holding not less than one-tenth of the issued share capital or, if the company has not a share capital, not less than 5% in number of the members of the company or such lesser number as is provided by the articles may call a meeting of the company.

(2) A meeting of a company or of a class of members, other than a meeting for the passing of a special resolution, shall be called by notice in writing of not less than 14 days or such longer period as is provided in the articles.

(3) A meeting shall, notwithstanding that it is called by notice shorter than is required by subsection (2), be deemed to be duly called if it is so agreed —

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

(b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote thereat, being a majority which together holds not less than 95% in nominal value of the shares giving a right to attend and vote or, in the case of a company not having a share capital, together represents not less than 95% of the total voting rights at that meeting of all the members.

(4) So far as the articles do not make other provision in that behalf notice of every meeting shall be served on every member having a right to attend and vote thereat in the manner in which notices are required to be served by Table A.

(5) The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any member shall not invalidate proceedings at a meeting. [145

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

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

(b) of making ineffective a demand for a poll on any question or matter other than the election of the chairman of the meeting or the adjournment of the meeting that is made —

(i) by not less than 5 members having the right to vote at the meeting;

(ii) by a member or members representing not less than 10% of the total voting rights of all the members having the right to vote at the meeting; or

(iii) by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than 10% of the total sum paid up on all the shares conferring that right; or

Articles as to
right to
demand a
poll.
U.K. s. 137.
Aust. s. 139.

- (c) of requiring the instrument appointing a proxy or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy to be received by the company or any other person more than 48 hours before a meeting or adjourned meeting in order that the appointment may be effective thereat.

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

(3) A person entitled to vote on a poll at a meeting shall be deemed to be a person entitled to vote for the purposes of this Act. [146

Quorum,
chairman,
voting, etc.,
at meetings.
U.K. s. 139.
Aust. s. 140.

179.—(1) So far as the articles do not make other provision in that behalf and subject to section 64 —

- (a) two members of the company personally present shall form a quorum;
- (b) any member elected by the members present at a meeting may be chairman thereof; and
- (c) in the case of a company having a share capital —
- (i) on a show of hands, each member who is personally present and entitled to vote shall have one vote; and
- (ii) on a poll, each member shall have one vote in respect of each share held by him and where all or part of the share capital consists of stock or units of stock each member shall have one vote in respect of the stock or units of stock held by him which is or are or were originally equivalent to one share; and
- (d) in the case of a company not having a share capital every member shall have one vote.

(2) On a poll taken at a meeting a person entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

(3) A corporation may by resolution of its directors or other governing body —

- (a) if it is a member of a company, authorise such person as it thinks fit to act as its representative either at a particular meeting or at all meetings of the company or of any class of members; or
- (b) if it is a creditor, including a holder of debentures, of a company, authorise such person as it thinks fit to act as its representative either at a particular meeting or at all meetings of any creditors of the company,

and a person so authorised shall, in accordance with his authority and until his authority is revoked by the corporation, be entitled to exercise the same powers on behalf of the corporation as the corporation could exercise if it were an individual member, creditor or holder of debentures of the company.

(4) Where —

- (a) a person present at a meeting is authorised to act as the representative of a corporation at the meeting by virtue of an authority given by the corporation under subsection (3); and
- (b) the person is not otherwise entitled to be present at the meeting,

the corporation shall, for the purposes of subsection (1), be deemed to be personally present at the meeting.

(5) A certificate under the seal of the corporation shall be prima facie evidence of the appointment or of the revocation of the appointment, as the case may be, of a representative pursuant to subsection (3).

(6) Where a holding company is beneficially entitled to the whole of the issued shares of a subsidiary and a minute is signed by a representative of the holding company authorised pursuant to subsection (3) stating that any act, matter, or thing, or any ordinary or special resolution, required by this Act or by the memorandum or articles of the subsidiary to be made, performed, or passed by or at an ordinary general meeting or an extraordinary general meeting of the subsidiary has been made, performed, or passed, that act, matter, thing, or resolution shall, for all purposes, be deemed to have been duly made, performed, or passed by

or at an ordinary general meeting, or as the case requires, by or at an extraordinary general meeting of the subsidiary.

(7) Where by or under any provision of this Act any notice, copy of a resolution or other document relating to any matter is required to be lodged by a company with the Registrar, and a minute referred to in subsection (6) is signed by the representative in pursuance of that subsection and the minute relates to such a matter the company shall within one month after the signing of the minute lodge a copy thereof with the Registrar. [147

As to
member's
rights at
meetings.

180.—(1) Subject to subsection (2), every member shall, notwithstanding any provision in the memorandum or articles, have a right to attend any general meeting of the company and to speak and vote on any resolution before the meeting except that the company's articles may provide that a member shall not be entitled to vote unless all calls or other sums personally payable by him in respect of shares in the company have been paid.

15/84.

(2) Notwithstanding subsection (1), the articles may provide that holders of preference shares shall not have the right to vote at a general meeting of the company except that any preference shares issued after the commencement of this Act shall carry the right to attend any general meeting and in a poll thereat to at least one vote in respect of each such share held —

- (a) during such period as the preferential dividend or any part thereof remains in arrear and unpaid, such period starting from a date not more than 12 months, or such lesser period as the articles may provide, after the due date of the dividend;
- (b) upon any resolution which varies the rights attached to such shares; or
- (c) upon any resolution for the winding up of the company.

(3) For the purposes of subsection (2), a dividend shall be deemed to be due on the date appointed in the articles for the payment of the dividend for any year or other period, or if no such date is appointed, upon the day immediately following the expiration of the year or other period and whether or not such dividend shall have been earned or declared. [148

181.—(1) A member of a company entitled to attend and vote at a meeting of the company, or at a meeting of any class of members of the company, shall be entitled to appoint another person or persons, whether a member or not, as his proxy to attend and vote instead of the member at the meeting and a proxy appointed to attend and vote instead of a member shall also have the same right as the member to speak at the meeting, but unless the articles otherwise provide —

Proxies.
U.K. s. 136.
Aust. s. 141.

- (a) a proxy shall not be entitled to vote except on a poll;
- (b) a member shall not be entitled to appoint more than two proxies to attend and vote at the same meeting; and
- (c) where a member appoints two proxies the appointments shall be invalid unless he specifies the proportions of his holdings to be represented by each proxy.

(2) In every notice calling a meeting of a company or a meeting of any class of members of a company there shall appear with reasonable prominence a statement as to the rights of the member to appoint proxies to attend and vote instead of the member, and that a proxy need not also be a member; and if default is made in complying with this subsection as respects any meeting, every officer of the company who is in default shall be guilty of an offence.

(3) Any person who authorises or permits an invitation to appoint as proxy a person or one of a number of persons specified in the invitation to be issued at the company's expense to some only of the members entitled to be sent a notice of the meeting and to vote thereat by proxy shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000.

15/84.

(4) No person shall be guilty of an offence under subsection (3) by reason only of the issue to a member at his request of a form of appointment naming the proxy or a list of persons willing to act as proxies if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(5) Any person who authorises or permits an invitation to appoint as proxy a person or one of a number of persons

specified in the invitation to be issued or circulated shall be guilty of an offence unless the invitation is accompanied by a form of proxy which shall entitle the member to direct the proxy to vote either for or against the resolution. [149

Power of
Court to
order
meeting.
U.K. s. 135.
Aust. s. 142.

182. If for any reason it is impracticable to call a meeting in any manner in which meetings may be called or to conduct the meeting in the manner prescribed by the articles or this Act, the Court may, either of its own motion or on the application of any director or of any member who would be entitled to vote at the meeting or of the personal representative of any such member, order a meeting to be called, held and conducted in such manner as the Court thinks fit, and may give such ancillary or consequential directions as it thinks expedient, including a direction that one member present in person or by proxy shall be deemed to constitute a meeting or that the personal representative of any deceased member may exercise all or any of the powers that the deceased member could have exercised if he were present at the meeting. [150

Circulation of
members'
resolutions,
etc.
U.K. s. 140.
Aust. s. 143.

183.—(1) Subject to this section, a company shall on the requisition in writing of such number of members of the company as is specified in subsection (2) and, unless the company otherwise resolves, at the expense of the requisitionists —

- (a) give to members of the company entitled to receive notice of the next annual general meeting notice of any resolution which may properly be moved and is intended to be moved at that meeting; and
- (b) circulate to members entitled to have notice of any general meeting sent to them any statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.

(2) The number of members necessary for a requisition under subsection (1) shall be —

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

- (b) not less than 100 members holding shares in the company on which there has been paid up an average sum, per member, of not less than \$500.

(3) Notice of a resolution referred to in subsection (1) shall be given, and any statement so referred to shall be circulated, to members of the company entitled to have notice of the meeting sent to them by serving a copy of the resolution or statement on each member in any manner permitted for service of notice of the meeting, and notice of the resolution shall be given to any other member of the company by giving notice of the general effect of the resolution in any manner permitted for giving him notice of meetings of the company, and the copy shall be served, or notice of the effect of the resolution shall be given, as the case may be, in the same manner and, so far as practicable, at the same time as notice of the meeting and, where it is not practicable for it to be served or given at that time, it shall be served or given as soon as practicable thereafter.

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

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

- (i) in the case of a requisition requiring notice of a resolution, not less than 6 weeks before the meeting; and

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

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

but if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called for a date 6 weeks or less after the copy has been deposited, the copy though not deposited within the time required by this subsection shall be deemed to have been properly deposited for the purposes thereof.

(5) The company shall not be bound under this section to circulate any statement if, on the application either of the company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter and the Court may order the company's costs on an application under this section to be paid in whole or in part by the requisitionists, notwithstanding that they are not parties to the application.

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

15/84.

(7) In the event of any default in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000. [151

Special
resolutions.
U.K. s. 141.
Aust. s. 144.

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

(2) Notwithstanding subsection (1), if it is so agreed by a majority in number of the members having the right to attend and vote at the meeting, being a majority which together holds not less than 95% in nominal value of the shares giving that right or, in the case of a company not having a share capital, together represents not less than 95% of the total voting rights that could be exercised at that meeting, a resolution may be proposed and passed as a special resolution at a meeting of which less than 21 days' notice has been given.

(3) At any meeting at which a special resolution is submitted a declaration of the chairman that the resolution is carried shall unless a poll is demanded be conclusive evidence of the fact without proof of the number or

proportion of the votes recorded in favour of or against the resolution.

(4) At any meeting at which a special resolution is submitted a poll shall be deemed 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 is specified in the articles, but it shall not in any case be necessary for more than 5 members to make the demand;

(b) if no such provision is made by the articles, by 3 members so entitled, or by one member or two members so entitled, if that member holds or those two members together hold not less than 10% of the paid-up share capital of the company or if that member represents or those two members together represent not less than 10% of the total voting rights of all the members having a right to vote at the meeting.

(5) In computing the majority on a poll demanded on the question that a special resolution be passed reference shall be had to the number of votes cast for and against the resolution and to the number of votes to which each member is entitled by this Act or the articles of the company.

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

(7) Any extraordinary resolution, duly and appropriately passed before the commencement of this Act shall for the purposes of this Act be treated as a special resolution. Transitory provisions.

(8) Where in the case of a company incorporated before the commencement of this Act any matter is required or permitted to be done by extraordinary resolution that matter may be done by special resolution. [152]

185. Where by this Act special notice is required of a resolution, the resolution shall not be effective unless notice of the intention to move it has been given to the company not less than 28 days before the meeting at which it is Resolution requiring special notice.
U.K. s. 142.
Aust. s. 145.

moved, and the company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice thereof, in any manner allowed by the articles, not less than 14 days before the meeting, but if after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date 28 days or less after the notice has been given, the notice, although not given to the company within the time required by this section, shall be deemed to be properly given. [153]

Registration and copies of certain resolutions and agreements.
U.K. s. 143.
Aust. s. 146.

186.—(1) A printed copy of —

- (a) every special resolution; and
- (b) every resolution or agreement which effectively binds any class of shareholders whether agreed to by all the members of that class or not,

shall except where otherwise expressly provided by this Act within one month after the passing or making thereof, be lodged by the company with the Registrar.

(2) Where articles have not been registered a printed copy of every resolution or agreement to which this section applies shall be forwarded to any member at his request on payment of \$1 or such less sum as the company directs.

15/84.

(3) In the event of any default in complying with subsection (1) the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

15/84.

(4) In the event of any default in complying with subsection (2) the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine of \$50 for each copy in respect of which default is made. [154]

Resolutions at adjourned meetings.
U.K. s. 144.
Aust. s. 147.

187. Where a resolution is passed at an adjourned meeting of a company or of holders of any class of shares or of directors the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed and not on any earlier date. [155]

188.—(1) Every company shall cause —

- (a) minutes of all proceedings of general meetings and of meetings of its directors and of its managers, if any, to be entered in books kept for that purpose within one month of the date upon which the relevant meeting was held; and
- (b) those minutes to be signed by the chairman of the meeting at which the proceedings were had or by the chairman of the next succeeding meeting.

(2) Any minutes so entered that purports to be signed as provided in subsection (1) shall be evidence of the proceedings to which they relate.

(3) Where minutes have been so entered and signed, then, until the contrary is proved —

- (a) the meeting shall be deemed to have been duly held and convened;
- (b) all proceedings had thereat shall be deemed to have been duly had; and
- (c) all appointments of officers or liquidators made thereat shall be deemed to be valid.

(4) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty.

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189.—(1) The books containing the minutes of proceedings of any general meeting shall be kept by the company at the registered office or the principal place of business in Singapore of the company, and shall be open to the inspection of any member without charge.

Inspection of
minute
books.
U.K. s. 146.
Aust. s. 149.

(2) Any member shall be entitled to be furnished within 14 days after he has made a request in writing in that behalf to the company with a copy of any minutes specified in subsection (1) at a charge not exceeding \$1 for every page thereof.

15/84.

(3) If any copy required under this section is not so furnished the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$400 and also to a default penalty.

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Minutes of
proceedings.
U.K. s. 145.
Aust. s. 148.

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Division 4 — Register of members

Register and
index of
members.
U.K. ss. 110,
118.
Aust. s. 151.

190.—(1) Every company shall keep a register of its members and enter therein —

- (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, if any, or by the number, if any, of the certificate evidencing the member's holding and of the amount paid or agreed to be considered as paid on the shares of each member;
- (b) the date at which the name of each person was entered in the register as a member;
- (c) the date at which any person who ceased to be a member during the previous 7 years so ceased to be a member; and
- (d) in the case of a company having a share capital, the date of every allotment of shares to members and the number of shares comprised in each allotment.

(2) Notwithstanding anything in subsection (1), where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the company shall alter the register to show the amount of stock or number of stock units held by each member instead of the number of shares and the particulars relating to shares specified in subsection (1) (a).

(3) Notwithstanding anything in subsection (1), a company may keep the names and particulars relating to persons who have ceased to be members of the company separately and the names and particulars relating to former members need not be supplied to any person who applies for a copy of the register unless he specifically requests the names and particulars of former members.

(4) The register of members shall be prima facie evidence of any matters inserted therein as required or authorised by this Act.

Index of
members of
company.

(5) Every company having more than 50 members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index in convenient form of the names of the members and shall, within 14 days

after the date on which any alteration is made in the register of members, make any necessary alteration in the index.

(6) The index shall in respect of each member contain a sufficient indication to enable the account of that member in the register to be readily found.

(7) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

15/84.

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191.—(1) The register of members and index, if any, shall be kept at the registered office of the company, but —

Where register to be kept.
U.K. s. 110.
Aust. s. 152.

(a) if the work of making them up is done at another office of the company in Singapore they may be kept at that other office; or

(b) if the company arranges with some other person to make up the register and index, if any, on its behalf they may be kept at the office of that other person at which the work is done if that office is in Singapore.

(2) Every company shall, within 14 days after the register and index, if any, are first kept at a place other than the registered office, lodge with the Registrar notice of the place where the register and index, if any, are kept and shall, within 14 days after any change in the place at which the register and index, if any, are kept, lodge with the Registrar notice of the change.

(3) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

15/84.

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192.—(1) A company may, on giving not less than 14 days' notice to the Registrar, close the register of members or any class of members for any time or times, but so that no part of the register shall be closed for more than 30 days in the aggregate in any calendar year.

Inspection and closing of register.
U.K. s. 115.
Aust. s. 153.

(2) The register and index shall be open to the inspection of any member without charge and of any other person on

payment for each inspection of \$1 or such less sum as the company requires.

15/84. (3) Any member or other person may request the company to furnish him with a copy of the register, or of any part thereof, but only so far as it relates to names, addresses, number of shares held and amounts paid on shares, on payment in advance of \$1 or such less sum as the company requires for every page thereof required to be copied and the company shall cause any copy so requested by any person to be sent to that person within a period of 21 days or within such further period as the Registrar considers reasonable in the circumstances commencing on the day next after the day on which the request is received by the company.

15/84. (4) If any copy so requested is not sent within the period prescribed by subsection (3), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$400 and also to a default penalty. [160]

Consequences of default by agent.
U.K. s. 114.
Aust. s. 154.

193. Where, by virtue of section 191 (1) (b), the register of members is kept at the office of some person other than the company, and by reason of any default of his the company fails to comply with section 191 (1) or (2) or with section 192 or with any requirements of this Act as to the production of the register, that other person shall be liable to the same penalties as if he were an officer of the company who was in default, and the power of the Court under section 399 shall extend to the making of orders against that other person and his officers and employees. [161]

Power of Court to rectify register.
U.K. s. 116.
Aust. s. 155.

194.—(1) If —

- (a) the name of any person is without sufficient cause entered in or omitted from the register; or
- (b) default is made or unnecessary delay takes place in entering in the register the fact of any person having ceased to be a member,

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

(2) On any application under subsection (1), the Court may decide —

- (a) 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
- (b) generally, any question necessary or expedient to be decided for the rectification of the register.

(3) The Court when making an order for rectification of the register shall by its order direct a notice of the rectification to be so lodged.

(4) No application for the rectification of a register in respect of an entry which was made in the register more than 30 years before the date of the application shall be entertained by the Court. [162

195.—(1) Any trustee, executor or administrator of the estate of any deceased person who was registered in a register or branch register kept in Singapore as the holder of a share in any corporation may become registered as the holder of that share as trustee, executor or administrator of that estate and shall in respect of that share be subject to the same liabilities and no more as he would have been subject to if the share had remained registered in the name of the deceased person.

Limitation of liability of trustee, etc., registered as owner of shares.
U.K. s. 117.
Aust. s. 156.

(2) Any trustee, executor or administrator of the estate of any deceased person who was beneficially entitled to a share in any corporation being a share registered in a register or branch register kept in Singapore may with the consent of the corporation and of the registered holder of that share become registered as the holder of the share as trustee, executor or administrator of that estate and shall in respect of the share be subject to the same liabilities and no more as he would have been subject to if the share had been registered in the name of the deceased person.

(3) Shares in a corporation registered in a register or branch register kept in Singapore and held by a trustee in respect of a particular trust shall at the request of the trustee

be marked in the register or branch register in such a way as to identify them as being held in respect of the trust.

(4) Except as provided in this section, no notice of any trust expressed, implied or constructive shall be entered on a register or branch register or be receivable by the Registrar and no liabilities shall be affected by anything done in pursuance of subsection (1), (2) or (3) or pursuant to the law of any other place which corresponds to this section and the corporation concerned shall not be affected with notice of any trust by anything so done. [163

Branch registers.
U.K. ss. 119-123.
Aust. s. 157.

196.—(1) A company having a share capital may cause to be kept in any place outside Singapore a branch register of members which shall be deemed to be part of the company's register of members.

(2) The company shall lodge with 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 lodged within one month after the opening of the office or of the change or discontinuance, as the case may be.

(3) A branch register shall be kept in the same manner in which the principal register is by this Act required to be kept.

(4) The company shall transmit to the office at which its principal register is kept a copy of every entry in its branch register as soon as possible after the entry is made, and shall cause to be kept at that office duly entered up from time to time a duplicate of its branch register, which shall for all purposes of this Act be deemed to be part of the principal register.

(5) Subject to 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.

(6) A company may discontinue a branch register and thereupon all entries in that register shall be transferred to some other branch register kept by the company in the same place or to the principal register.

(7) This section shall apply to all companies incorporated in Singapore.

(8) If by virtue of the law in force in any other country any corporation incorporated under that law keeps in Singapore a branch register of its members, the President may by order declare that the provisions of this Act relating to inspection, place of keeping and rectification of registers of members shall, subject to any modifications specified in the order, apply to and in relation to any such branch register kept in Singapore as they apply to and in relation to the registers of companies under this Act and thereupon those provisions shall apply accordingly.

(9) If default is made in complying with this section, the company and every officer of the company who is in default and every person who, pursuant to section 191, has arranged to make up the principal register, and who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty. 15/84.

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Division 5 — Annual return

197.—(1) Every company having a share capital shall make a return containing the particulars referred to in Part I of the Eighth Schedule and accompanied by such copies of documents as are required to be included in the return in accordance with Part II of that Schedule and such of the certificates and other particulars prescribed in that Part as are applicable to the company. Annual return by a company having a share capital. U.K. s. 124. Aust. s. 158.

(2) The return shall be in accordance with the form set out in Part II of the Eighth Schedule or as near thereto as circumstances admit and shall be made up to the date of the annual general meeting of the company in the year or a date not later than the fourteenth day after the date of the annual general meeting.

(3) In the case of a company keeping a branch register, the particulars of the entries in that register shall, so far as they relate to matters which are required to be stated in the return, be included in the return made next after copies of those entries are received at the registered office of the company.

(4) The annual return signed by a director or by the manager or secretary of the company shall be lodged with

the Registrar within one month or in the case of a company keeping pursuant to its articles a branch register in any place outside Singapore within two months after the annual general meeting.

Annual return by company not having a share capital. U.K. s. 125. Aust. s. 159.

(5) A company not having a share capital shall, within one month after each annual general meeting of the company, lodge with the Registrar a return in the prescribed form containing the particulars referred to in subsection (6) and made up to the date of the annual general meeting or a date not later than the fourteenth day after the date of the annual general meeting.

(6) The return of a company not having a share capital shall contain —

- (a) the address of the registered office of the company;
- (b) in a case in which the register of members is, under this Act, kept elsewhere than at that office, the address of the place where it is kept;
- (c) particulars of the total amount of the indebtedness of the company in respect of all charges which are required to be registered with the Registrar;
- (d) all such particulars with respect to the persons who on the day to which the return is made up are the directors, managers or secretaries of the company as are required to be contained in the register of directors, managers and secretaries;
- (e) the name and address of the auditor of the company; and
- (f) such other matters relating to the accounts of the company and to the unclaimed moneys held by the company as are prescribed.

15/84.

(7) If a company fails to comply with this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty. [165

Exemption from filing list of members with annual return for certain public companies. Aust. s. 160.

198.—(1) A public company which —

- (a) has more than 500 members; and
- (b) provides reasonable accommodation and facilities for persons to inspect and take copies of its list of members and its particulars of shares transferred,

need not comply with such of the provisions of this Division and the Eighth Schedule as relate to the inclusion in the annual return of a list of members if there is included in the annual return a certificate by the secretary that the company is of a kind to which this subsection applies.

(2) The Minister may, by notification in the *Gazette*, require any company to which subsection (1) applies to comply with all or any of the provisions of this Division or of the Eighth Schedule referred to in subsection (1).

(3) If default is made in complying with the notice given under subsection (2), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty. 15/84.

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PART VI

ACCOUNTS AND AUDIT

Division 1 — Accounts

199.—(1) Every company and the directors and managers thereof shall cause to be kept such accounting and other records as will sufficiently explain the transactions and financial position of the company and enable true and fair profit and loss accounts and balance-sheets and any documents required to be attached thereto to be prepared from time to time, and shall cause those records to be kept in such manner as to enable them to be conveniently and properly audited.

Accounts to
be kept.
U.K. s. 147.
Aust. s. 161A.

(2) The company shall retain the records referred to in subsection (1) for 7 years after the completion of the transactions or operations to which they respectively relate.

(3) The records referred to in subsection (1) shall be kept at the registered office of the company or at such other place as the directors think fit and shall at all times be open to inspection by the directors.

(4) If accounting and other records are kept by the company at a place outside Singapore there shall be sent to and kept at a place in Singapore and be at all times open to inspection by the directors such statements and returns with respect to the business dealt with in the records so kept as will enable to be prepared true and fair profit and loss

accounts and balance-sheets and any documents required to be attached thereto.

(5) The Court may in any particular case order that the accounting and other records of a company be open to inspection by an approved company auditor acting for a director, but only upon an undertaking in writing given to the Court that information acquired by the auditor during his inspection shall not be disclosed by him except to that director.

15/84.

(6) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 3 months and also to a default penalty.

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As to
accounting
periods of
companies
within the
same group.
Aust. s. 161b.

200.—(1) Subject to subsections (11) and (12), the directors of every holding company that is not a foreign company shall take such steps as are necessary to ensure that —

- (a) within two years after the commencement of this Act, the financial years of each of its subsidiaries coincide with the financial year of the holding company; and
- (b) within two years after any corporation becomes a subsidiary of the holding company, the financial year of that corporation coincides with the financial year of the holding company.

(2) Where the financial year of a holding company that is not a foreign company and that of each of its subsidiaries coincide the directors of the holding company shall at all times take such steps as are necessary to ensure that, without the consent of the Registrar, the financial year of the holding company or any of its subsidiaries is not altered so that all such financial years do not coincide.

(3) Where the directors of the holding company are of the opinion that there is good reason why the financial year of any of its subsidiaries should not coincide with the financial year of the holding company the directors may apply in writing to the Registrar for an order authorising any subsidiary to continue to have or to adopt (as the case requires) a financial year which does not coincide with that of the holding company.

(4) The application shall be supported by a statement by the directors of the holding company of their reasons for seeking the order.

(5) The Registrar may require the directors who make an application under this section to supply such information relating to the operation of the holding company and of any corporation that is deemed by virtue of section 6 to be related to the holding company as he thinks necessary for the purpose of determining the application.

(6) The Registrar may at the expense of the holding company of which the applicants are directors request any approved company auditor to investigate and report on the application.

(7) The Registrar may rely upon any report obtained pursuant to subsection (6) from the approved company auditor.

(8) The Registrar may make an order granting or refusing the application or granting the application subject to such limitations, terms or conditions as he thinks fit and shall serve the order on the holding company.

(9) Where the applicants are aggrieved by any order made by the Registrar, the applicants may within two months after the service of the order upon the holding company appeal against the order to the Minister.

(10) The Minister shall determine the appeal and in determining the appeal may make any order that the Registrar had power to make on the original application and may exercise any of the powers that the Registrar might have exercised in relation to the original application.

(11) Where the directors of a holding company have applied to the Registrar for an order authorising any subsidiary to continue to have a financial year which does not coincide with that of the holding company, the operation of subsection (1) shall be suspended in relation to that subsidiary until the determination of the application and of any appeal arising out of the application.

(12) Where an order is made authorising any subsidiary to have a financial year which does not coincide with that of the holding company, compliance with the terms of the order of the Registrar, or where there has been an appeal,

compliance with the terms of any order made on the determination of the appeal shall be deemed to be a compliance with subsection (1) in relation to that subsidiary but where an application for such an order and the appeal, if any, arising out of that application are refused, the time within which the directors of the holding company are required to comply with subsection (1) in relation to that subsidiary shall be deemed to be the period of 12 months after the date upon which the order of the Registrar is served on the holding company or the period of 12 months after the determination of the appeal, as the case may be.

(13) Where the directors of a holding company have applied to the Registrar for an order authorising any of its subsidiaries to continue to have or to adopt a financial year which does not coincide with that of the holding company and the application and the appeal, if any, arising out of that application, have been refused, the directors of the holding company shall not make a similar application with respect to that subsidiary within 3 years after the refusal of the application or where there is an appeal after the determination of that appeal unless the Registrar is satisfied that there has been a substantial change in the relevant facts or circumstances since the refusal of the former application or the determination of the appeal, as the case may be.

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Profit and
loss account,
balance-sheet
and directors'
report.
U.K. ss. 148,
149, 156, 157.
Aust. s. 162.

201.—(1) The directors of every company shall, at some date not later than 18 months after the incorporation of the company and subsequently once at least in every calendar year at intervals of not more than 15 months, lay before the company at its annual general meeting a profit and loss account for the period since the preceding account (or in the case of the first account, since the incorporation of the company) made up to a date not more than 6 months before the date of the meeting.

(2) Notwithstanding subsection (1), the Registrar on application by the company, if for any special reason he thinks fit to do so, may extend the periods of 18 months and 15 months referred to in that subsection and with respect to any year extend the period of 6 months referred to in that subsection, notwithstanding that that period is so extended beyond the calendar year.

(3) The directors of every company shall cause to be made out, and to be laid before the company at its annual general meeting with the profit and loss account required by subsection (1) a balance-sheet as at the date to which the profit and loss account is made up.

(4) The profit and loss account and the balance-sheet of a company shall be duly audited before they are laid before the company at its annual general meeting as required by this section.

(5) The directors of a company shall cause to be attached to every balance-sheet made out under subsection (3) a report made in accordance with a resolution of the directors and signed by not less than two of the directors with respect to the profit or loss of the company for the financial year and the state of the company's affairs as at the end of the financial year and if the company is a holding company also a report with respect to the state of affairs of the holding company and all its subsidiaries. ^{62/70}
^{49/73.}

(6) Each report to which subsection (5) relates shall state with appropriate details — ^{62/70.}

- (a) the names of the directors in office at the date of the report;
- (b) the principal activities of the company in the course of the financial year and any significant change in the nature of those activities during that period;
- (c) the net amount of the profit or loss of the company for the financial year after provision for income tax;
- (d) the amounts and particulars of any material transfers to or from reserves or provisions;
- (e) where, during the financial year, the company has issued any shares or debentures — the purposes of the issue, the classes of shares or debentures issued, the number of shares of each class and the amount of debentures of each class, and the terms of issue of the shares and debentures of each class;
- (f) whether at the end of that financial year, there subsist arrangements to which the company is a party, being arrangements whose objects are, or

one of whose objects is, to enable directors of the company to acquire benefits by means of the acquisition of shares in, or debentures of, the company or any other body corporate, or there have, at any time in that year, subsisted such arrangements as aforesaid to which the company was a party, and if so the report shall contain a statement explaining the effect of the arrangements and giving the names of the persons who at any time in that year were directors of the company and held, or whose nominees held, shares or debentures acquired in pursuance of the arrangements;

- (g) as respects each person who, at the end of the financial year, was a director of the company, whether or not (according to the register kept by the company for the purposes of section 164 relating to the obligation of a director of a company to notify it of his interests in shares in, or debentures of, the company and of every other body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company) he was, at the end of that year, interested in shares in, or debentures of, the company or any other such body corporate and, if he was, the number and amount of shares in, and debentures of, each body (specifying it) in which, according to that register, he was then interested and whether or not, according to that register, he was, at the beginning of that year (or, if he was not then a director, when he became a director), interested in shares in, or debentures of, the company or any other such body corporate and, if he was, the number and amount of shares in, and debentures of, each body (specifying it) in which, according to that register, he was interested at the beginning of that year or, as the case may be, when he became a director;
- (h) the amount, if any, which the directors recommend should be paid by way of dividend, and any amounts which have been paid or declared by way of dividend since the end of the previous

financial year, indicating which of those amounts, if any, have been shown in a previous report under this subsection or under a corresponding previous enactment;

- (i) whether the directors (before the profit and loss account and balance-sheet were made out) took reasonable steps to ascertain what action had been taken in relation to the writing off of bad debts and the making of provision for doubtful debts, and satisfied themselves that all known bad debts had been written off and that adequate provision had been made for doubtful debts;
- (j) whether at the date of the report the directors are aware of any circumstances which would render the amount written off for bad debts or the amount of the provision for doubtful debts inadequate to any substantial extent (and, if so, giving particulars of the circumstances);
- (k) whether the directors (before the profit and loss account and balance-sheet were made out) took reasonable steps to ensure that any current assets which were unlikely to realise in the ordinary course of business their value as shown in the accounting records of the company were written down to an amount which they might be expected so to realise;
- (l) whether at the date of the report the directors are aware of any circumstances which would render the values attributed to current assets in the accounts misleading (and, if so, giving particulars of the circumstances);
- (m) whether there exists at the date of the report —
 - (i) any charge on the assets of the company which has arisen since the end of the financial year which secures the liabilities of any other person (and, if so, giving particulars of any such charge and, so far as practicable, of the amount secured); and
 - (ii) any contingent liability which has arisen since the end of the financial year (and,

if so, stating the general nature thereof and, so far as practicable, the maximum amount, or an estimate of the maximum amount, for which the company could become liable in respect thereof);

- (n) whether any contingent or other liability has become enforceable, or is likely to become enforceable, within the period of 12 months after the end of the financial year which, in the opinion of the directors, will or may affect the ability of the company to meet its obligations when they fall due (and, if so, giving particulars of any such liability);
- (o) whether at the date of the report the directors are aware of any circumstances not otherwise dealt with in the report or accounts which would render any amount stated in the accounts misleading (and, if so, giving particulars of the circumstances);
- (p) whether the results of the company's operations during the financial year were, in the opinion of the directors, substantially affected by any item, transaction or event of a material and unusual nature (and, if so, giving particulars of that item, transaction or event and the amount or the effect thereof, if known or reasonably ascertainable); and
- (q) whether there has arisen in the interval between the end of the financial year and the date of the report any item, transaction or event of a material and unusual nature likely, in the opinion of the directors, to affect substantially the results of the company's operations for the financial year in which the report is made (and, if so, giving particulars of the item, transaction or event).

62/70.

(7) In subsection (6), "any item, transaction or event of a material and unusual nature" includes but is not limited to —

- (a) any change in accounting principles adopted since the last report;

- (b) any material change in the method of valuation of the whole or any part of the trading stock;
- (c) any material item appearing in the accounts or consolidated accounts for the first time or not usually included in the accounts or consolidated accounts; and
- (d) any absence from the accounts or consolidated accounts of any material item usually included in the accounts or consolidated accounts.

(8) The directors of a company shall state in the report ^{62/70.} whether since the end of the previous financial year a director of the company has received or become entitled to receive a benefit (other than a benefit included in the aggregate amount of emoluments received or due and receivable by the directors shown in the accounts or the fixed salary of a full-time employee of the company) by reason of a contract made by the company or a related corporation with the director or with a firm of which he is a member, or with a company in which he has a substantial financial interest and, if so, the general nature of the benefit.

(9) Every statement, report or other document relating ^{62/70.} to the affairs of a company or any of its subsidiaries attached to, or included with, a report of the directors laid before the company at its general meeting or sent to the members under section 203 (not being a statement, report or document required by this Act to be laid before the company in general meeting) shall, for the purposes of section 401 be deemed to be part of that last-mentioned report.

(10) Where at the end of a financial year a company is the ^{62/70} subsidiary of another corporation, the directors of the ^{15/84.} company shall state in, or in a note as a statement annexed to, the company accounts laid before the company at its annual general meeting the name of the corporation regarded by the directors as being the company's ultimate holding company and, if known to them, the country in which it is incorporated.

(11) Where any option has been granted during the period covered by the profit and loss account to take up unissued shares of a company the report required by subsection (5) shall state —

- (a) the name of the person to whom the option has been granted;

- (b) the number and class of shares in respect of which the option has been granted;
- (c) the date of expiration of the option;
- (d) the basis upon which the option may be exercised; and
- (e) whether the person to whom the option has been granted has any right to participate by virtue of the option in any share issue of any other company.

49/73.

(12) Each report required by subsection (5) shall specify —

- (a) particulars of shares issued during the period to which the report relates by virtue of the exercise of options to take up unissued shares of the company, whether granted before or during that period;
- (b) the number and class of unissued shares of the company under option as at the end of that period, the price, or method of fixing the price, of issue of those shares, the date of expiration of the option and the rights, if any, of the persons to whom the options have been granted to participate by virtue of the options in any share issue of any other company.

(13) Subsection (11) (a) shall not apply in any case where the option to take up shares of the company has been conferred generally on all the holders of a class of shares or debentures of the company.

(14) Every balance-sheet referred to in subsection (3) shall give a true and fair view of the state of affairs of the company as at the end of the period to which it relates and every profit and loss account referred to in subsection (1) shall give a true and fair view of the profit or loss of the company for the period of accounting as shown in the accounting and other records of the company, and without affecting the generality of the foregoing, every such balance-sheet and profit and loss account shall comply with the requirements of the Ninth Schedule so far as applicable thereto.

(15) Every balance-sheet and profit and loss account laid before a company in general meeting (including any consolidated balance-sheet and consolidated profit and loss

account annexed to the balance-sheet and profit and loss account of a holding company) shall be accompanied by a statement signed on behalf of the directors by two directors of the company, stating that in their opinion —

- (a) the profit and loss account and, where applicable the consolidated profit and loss account, is or are drawn up so as to give a true and fair view of the results of the business of the company and, if applicable, of all the companies the accounts of which are dealt with in the consolidated profit and loss account for the period covered by the account or accounts; and
- (b) the balance-sheet and, where applicable, the consolidated balance-sheet, is or are drawn up so as to exhibit a true and fair view of the state of affairs of the company and, if applicable, of all the companies the affairs of which are dealt with in the consolidated balance-sheet as at the end of that period.

(16) Every balance-sheet and profit and loss account of a company laid before the company in general meeting (including any consolidated balance-sheet and consolidated profit and loss account annexed to the balance-sheet and profit and loss account of a holding company) shall be accompanied by a statutory declaration by the officer responsible for the accounting records and for the financial management of the company setting forth his opinion as to the correctness or otherwise of the balance-sheet and profit and loss account and, where applicable, the consolidated balance-sheet and consolidated profit and loss account. 15/84.

(17) Any document (other than a balance-sheet prepared in accordance with this Act) or advertisement published, issued or circulated by or on behalf of a company (other than a banking corporation) shall not contain any direct or indirect representation that the company has any reserve unless the representation is accompanied —

- (a) if the reserve is invested outside the business of the company — by a statement showing the manner in which and the security upon which it is invested; or
- (b) if the reserve is being used in the business of the company — by a statement to the effect that the reserve is being so used.

49/73.

(18) To the extent that any company registered under any written law relating to insurance is required to prepare balance-sheets, revenue accounts and profit and loss accounts in the form prescribed by that law, the company shall be deemed to have complied with the requirements of subsections (5) to (17) and the Ninth Schedule if its balance-sheet and profit and loss account are made out in accordance with that law but if the company carries on business other than insurance business in so far as that law does not require the company to deal with any matters which are required to be dealt with under the Ninth Schedule, it shall be necessary for the company to comply with this section and the Ninth Schedule.

Cap. 195.

(19) The provisions of this Act relating to the form and content of the report of the directors and the annual balance-sheet and profit and loss account shall apply to a banking corporation with such modifications and exceptions as are determined either generally or in any particular case by the Monetary Authority of Singapore established under section 3 of the Monetary Authority of Singapore Act. [169

Relief from requirements as to form and content of accounts and reports. 62/70.

202.—(1) The directors of a company may apply to the Registrar in writing for an order relieving them from any requirement of this Act relating to the form and content of accounts or consolidated accounts or to the form and content of the report required by section 201 (6) and the Registrar may make such an order either unconditionally or on condition that the directors comply with such other requirements relating to the form and content of the accounts or consolidated accounts or report as the Registrar thinks fit to impose.

(2) The Registrar may, where he considers it appropriate, make an order in respect of a specified class of companies relieving the directors of a company in that class from compliance with any specified requirements of this Act relating to the form and content of accounts or consolidated accounts or to the form and content of the report required by section 201 (6) and the order may be made either unconditionally or on condition that the directors of the company comply with such other requirements relating to the form and content of accounts or consolidated accounts or report as the Registrar thinks fit to impose.

(3) The Registrar shall not make an order under subsection (1) unless he is of the opinion that compliance with the requirements of this Act would render the accounts or consolidated accounts or report, as the case may be, misleading or inappropriate to the circumstances of the company or would impose unreasonable burdens on the company or any officer of the company.

(4) The Registrar may make an order under subsection (1) which may be limited to a specific period and may from time to time either on application by the directors or without any such application (in which case the Registrar shall give to the directors an opportunity of being heard) revoke or suspend the operation of any such order.

[169A

203.—(1) A copy of every profit and loss account and balance-sheet (including every document required by law to be attached thereto) which is to be laid before a company in general meeting accompanied by a copy of the auditor's report thereon shall, not less than 14 days before the date of the meeting, be sent to all persons entitled to receive notice of general meetings of the company.

Members of company entitled to balance-sheet, etc.
U.K. s. 158.
Aust. s. 164.

(2) Any member of a company (whether he is or is not entitled to have sent to him copies of the profit and loss accounts and balance-sheets) to whom copies have not been sent and any holder of a debenture shall, on a request being made by him to the company, be furnished by the company without charge with a copy of the last profit and loss account and balance-sheet of the company (including every document required by this Act to be attached thereto) together with a copy of the auditor's report thereon.

(3) If default is made in complying with subsection (1) or (2), the company and every officer of the company who is in default shall, unless it is proved that the member or holder of a debenture in question has already made a request for and been furnished with a copy of the document, be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 and also to a default penalty. [170

15/84.

204.—(1) If any director of a company fails to comply or to take all reasonable steps to secure compliance by the company with the foregoing provisions of this Division or has by his own wilful act been the cause of any default by the company thereunder, he shall be guilty of an offence and

Penalty.
U.K. s. 147
(4).
Aust. s. 163.
15/84.

shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years.

(2) In any proceedings against a person for failure to take reasonable steps to secure compliance by a company with the foregoing provisions of this Division it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that those provisions were complied with and that that person was in a position to discharge that duty.

62/70
15/84.

(3) If an offence under this section is committed with intent to defraud creditors of the company or creditors of any other person or for a fraudulent purpose, the offender shall be liable on conviction to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 3 years or to both.

(4) A person shall not be sentenced to imprisonment for any offence under this section unless in the opinion of the Court dealing with the case the offence was committed wilfully. [171

Division 2 — Audit

Appointment
and remuneration
of
auditors.
U.K. ss.
159–161.
Aust. s. 165.
15/84.

205.—(1) The directors of a company shall, within 3 months after incorporation of the company, appoint a person or persons to be the auditor or auditors of the company, and any auditor or auditors so appointed shall, subject to this section, hold office until the conclusion of the first annual general meeting.

(2) A company shall at each annual general meeting of the company appoint a person or persons to be the auditor or auditors of the company, and any auditor or auditors so appointed shall, subject to this section, hold office until the conclusion of the next annual general meeting of the company.

(3) Subject to subsections (7) and (8), the directors of a company may appoint an approved company auditor to fill any casual vacancy in the office of auditor of the company, but while such a vacancy continues the surviving or continuing auditor or auditors, if any, may act.

(4) An auditor of a company may be removed from office by resolution of the company at a general meeting of which special notice has been given, but not otherwise.

(5) Where special notice of a resolution to remove an auditor is received by a company —

- (a) it shall forthwith send a copy of the notice to the auditor concerned and to the Registrar; and
- (b) the auditor may, within 7 days after the receipt by him of the copy of the notice, make representations in writing to the company (not exceeding a reasonable length) and request that, prior to the meeting at which the resolution is to be considered, a copy of the representations be sent by the company to every member of the company to whom notice of the meeting is sent.

(6) Unless the Registrar on the application of the company otherwise orders, the company shall send a copy of the representations as so requested and the auditor may, without prejudice to his right to be heard orally, require that the representations be read out at the meeting.

(7) Where an auditor of a company is removed from office in pursuance of subsection (4) at a general meeting of the company —

- (a) the company may, at the meeting, by a resolution passed by a majority of not less than three-fourths of such members of the company as being entitled to do so vote in person or, where proxies are allowed, by proxy forthwith appoint another person nominated at the meeting as auditor; or
- (b) the meeting may be adjourned to a date not earlier than 20 days and not later than 30 days after the meeting and the company may, by ordinary resolution, appoint another person as auditor, being a person notice of whose nomination as auditor has, at least 10 days before the resumption of the adjourned meeting, been received by the company.

(8) A company shall, forthwith after the removal of an auditor from office in pursuance of subsection (4), give notice in writing of the removal to the Registrar and, if the company does not appoint another auditor under subsection (7), the Registrar shall appoint an auditor.

(9) An auditor appointed in pursuance of subsection (7) or (8) shall, subject to this section, hold office until the conclusion of the next annual general meeting of the company.

15/84.

(10) If the directors do not appoint an auditor or auditors as required by this section, the Registrar may on the application in writing of any member of the company make the appointment.

(11) Subject to subsection (7), a person shall not be capable of being appointed auditor of a company at an annual general meeting unless he held office as auditor of the company immediately before the meeting or notice of his nomination as auditor was given to the company by a member of the company not less than 21 days before the meeting.

(12) Where notice of nomination of a person as an auditor of a company is received by the company whether for appointment at an adjourned meeting under subsection (7) or at an annual general meeting, the company shall, not less than 7 days before the adjourned meeting or the annual general meeting, send a copy of the notice to the person nominated, to each auditor, if any, of the company and to each person entitled to receive notice of general meetings of the company.

(13) If, after notice of nomination of a person as an auditor of a company has been given to the company, the annual general meeting of the company is called for a date 21 days or less after the notice has been given, subsection (11) shall not apply in relation to the person and, if the annual general meeting is called for a date not more than 7 days after the notice has been given and a copy of the notice is, at the time notice of the meeting is given, sent to each person to whom, under subsection (12), it is required to be sent, the company shall be deemed to have complied with that subsection in relation to the notice.

(14) An auditor of a company may resign —

- (a) if he is not the sole auditor of the company; or
- (b) at a general meeting of the company,

but not otherwise.

(15) If an auditor gives notice in writing to the directors of the company that he desires to resign, the directors shall

call a general meeting of the company as soon as is practicable for the purpose of appointing an auditor in place of the auditor who desires to resign and on the appointment of another auditor the resignation shall take effect.

(16) The fees and expenses of an auditor of a company —

- (a) in the case of an auditor appointed by the company at a general meeting — shall be fixed by the company in general meeting or, if so authorised by the members at the last preceding annual general meeting, by the directors; and
- (b) in the case of an auditor appointed by the directors or by the Registrar — may be fixed by the directors or by the Registrar, as the case may be, and, if not so fixed, shall be fixed as provided in paragraph (a) as if the auditor had been appointed by the company.

(17) If default is made in complying with this section, the company and every director of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000. 15/84. [172

206.—(1) If a company is served with a notice sent by or on behalf of —

- (a) at least 5% of the total number of members of the company; or
- (b) the holders in aggregate of not less than 5% in nominal value of the company's issued share capital,

requiring particulars of all emoluments paid to or receivable by the auditor of the company or any person who is a partner or employer or employee of the auditor, by or from the company or any subsidiary in respect of services other than auditing services rendered to the company, the company shall forthwith —

- (c) prepare or cause to be prepared a statement showing particulars of all emoluments paid to the auditor or other person and of the services in respect of which the payments have been made for the financial year immediately preceding the service of such notice;

Auditors' remuneration.
Aust. s. 166.

- (d) forward a copy of the statement to all persons entitled to receive notice of general meetings of the company; and
- (e) lay such statement before the company in general meeting.

15/84.

(2) If default is made in complying with this section, the company and every director of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000. [173

Powers and duties of auditors as to reports on accounts. 49/73.

207.—(1) An auditor of a company shall report to the members on the accounts required to be laid before the company in general meeting and on the company's accounting and other records relating to those accounts and if it is a holding company for which consolidated accounts are prepared shall also report to the members on the consolidated accounts.

(2) An auditor shall, in a report under this section, state —

- (a) whether the accounts and, if the company is a holding company for which consolidated accounts are prepared, the consolidated accounts are in his opinion properly drawn up —
 - (i) so as to give a true and fair view of the matters required by section 201 to be dealt with in the accounts and, if there are consolidated accounts, in the consolidated accounts; and
 - (ii) in accordance with the provisions of this Act so as to give a true and fair view of the company's affairs;
- (b) whether the accounting and other records and the registers required by this Act to be kept by the company and, if it is a holding company, by the subsidiaries other than those of which he has not acted as auditor have been, in his opinion, properly kept in accordance with the provisions of this Act;
- (c) in the case of consolidated accounts —
 - (i) the names of the subsidiaries, if any, of which he has not acted as auditor;

- (ii) whether he has considered the accounts and auditor's reports of all subsidiaries of which he has not acted as auditor, being accounts that are included (whether separately or consolidated with other accounts) in the consolidated accounts;
 - (iii) whether he is satisfied that the accounts of the subsidiaries that are consolidated with other accounts are in form and content appropriate and proper for the purposes of the preparation of the consolidated accounts, and whether he has received satisfactory information and explanations as required by him for those purposes; and
 - (iv) whether the auditor's report on the accounts of any subsidiary was made subject to any qualification (other than a qualification that is not material in relation to the consolidated accounts), or included any comment made under subsection (3) and, if so, particulars of the qualification or comment;
- (d) any defect or irregularity in the accounts or consolidated accounts and any matter not set out in the accounts or consolidated accounts without regard to which a true and fair view of the matters dealt with by the accounts or consolidated accounts would not be obtained; and
- (e) if he is not satisfied as to any matter referred to in paragraph (a), (b) or (c), his reasons for not being so satisfied.

(3) It is the duty of an auditor of a company to form an opinion as to each of the following matters:

- (a) whether he has obtained all the information and explanations that he required;
- (b) whether proper accounting and other records, including registers, have been kept by the company as required by this Act;
- (c) whether the returns received from branch offices of the company are adequate; and

(d) whether the procedures and methods used by a holding company or a subsidiary in arriving at the amounts taken into any consolidated accounts were appropriate to the circumstances of the consolidation,

and he shall state in his report particulars of any deficiency, failure or short-coming in respect of any matter referred to in this subsection.

15/84.

(4) An auditor shall not be required to form an opinion in his report as to whether the accounting and other records of subsidiaries (which are not incorporated in Singapore) of a Singapore holding company have been kept in accordance with this Act.

(5) An auditor of a company has a right of access at all times to the accounting and other records, including registers, of the company, and is entitled to require from any officer of the company and any auditor of a related company such information and explanations as he desires for the purposes of audit.

(6) An auditor of a holding company for which consolidated accounts are required has a right of access at all times to the accounting and other records, including registers, of any subsidiary, and is entitled to require from any officer or auditor of any subsidiary, at the expense of the holding company, such information and explanations in relation to the affairs of the subsidiary as he requires for the purpose of reporting on the consolidated accounts.

(7) The auditor's report shall be attached to or endorsed on the accounts or consolidated accounts and shall, if any member so requires, be read before the company in general meeting and shall be open to inspection by any member at any reasonable time.

(8) An auditor of a company or his agent authorised by him in writing for the purpose is entitled to attend any general meeting of the company and to receive all notices of, and other communications relating to, any general meeting which a member is entitled to receive, and to be heard at any general meeting which he attends on any part of the business of the meeting which concerns the auditor in his capacity as auditor.

(9) If an auditor, in the course of the performance of his duties as auditor of a company, is satisfied that —

- (a) there has been a breach or non-observance of any of the provisions of this Act; and
- (b) the circumstances are such that in his opinion the matter has not been or will not be adequately dealt with by comment in his report on the accounts or consolidated accounts or by bringing the matter to the notice of the directors of the company or, if the company is a subsidiary, of the directors of its holding company,

he shall forthwith report the matter in writing to the Registrar.

(10) An officer of a corporation who refuses or fails without lawful excuse to allow an auditor of the corporation or an auditor of a corporation who refuses or fails without lawful excuse to allow an auditor of its holding company access, in accordance with this section, to any accounting and other records, including registers, of the corporation in his custody or control, or to give any information or explanation as and when required under this section, or otherwise hinders, obstructs or delays an auditor in the performance of his duties or the exercise of his powers, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$4,000. 15/84.

[174

208.—(1) An auditor shall not, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of any statement which he makes in the course of his duties as auditor, whether the statement is made orally or in writing.

Auditors and other persons to enjoy qualified privilege in certain circumstances. 49/73.

(2) A person shall not, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of the publication of any document prepared by an auditor in the course of his duties and required by this Act to be lodged with the Registrar.

(3) This section does not limit or affect any other right, privilege or immunity that an auditor or other person has as defendant in an action for defamation. [174A

Duties of auditors to trustee for debenture holders.
Aust. s. 167A.

209.—(1) The auditor of a borrowing corporation shall within 7 days after furnishing the corporation with any balance-sheet or profit and loss account or any report, certificate or other document which he is required by this Act or by the debentures or trust deed to give to the corporation, send by post to every trustee for the holders of debentures of the borrowing corporation a copy thereof.

(2) Where, in the performance of his duties as auditor of a borrowing corporation, the auditor becomes aware of any matter which is in his opinion relevant to the exercise and performance of the powers and duties imposed by this Act or by any trust deed upon any trustee for the holders of debentures of the corporation, he shall, within 7 days after so becoming aware of the matter, send by post a report in writing on such matter to the borrowing corporation and a copy thereof to the trustee.

15/84.

(3) If any person fails to comply with subsection (2) he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty. [175

PART VII

ARRANGEMENTS, RECONSTRUCTIONS AND TAKE-OVERS

Power to compromise with creditors and members.
U.K. s. 206.
Aust. s. 181.

210.—(1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them or between the company and its members or any class of them the Court may, on the application in a summary way of the company or of any creditor or member of the company, or in the case of a company being wound up of the liquidator, order a meeting of the creditors or class of creditors or of the members of the company or class of members to be summoned in such manner as the Court directs.

(2) A meeting held pursuant to an order of the Court made under subsection (1) may be adjourned from time to time if the resolution for adjournment is approved by a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members present and voting either in person or by proxy at the meeting.

(3) If a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members present and voting either in person or by proxy at the meeting or the adjourned meeting agrees to any compromise or arrangement the compromise or arrangement shall, if approved by order of the Court, be binding on all the creditors or class of creditors or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(4) The Court may grant its approval to a compromise or arrangement subject to such alterations or conditions as it thinks just.

(5) An order under subsection (3) shall have no effect until an office copy of the order is lodged with the Registrar, and upon being so lodged, the order shall take effect on and from the date of lodgment or such earlier date as the Court may determine and as may be specified in the order.

(6) Subject to subsection (7), a copy of every order made under subsection (3) shall be annexed to every copy of the memorandum of the company issued after the order has been made, or, in the case of a company not having a memorandum, to every copy so issued of the instrument constituting or defining the constitution of the company.

(7) The Court may, by order, exempt a company from compliance with the requirements of subsection (6) or determine the period during which the company shall so comply.

(8) Where any such compromise or arrangement (whether or not for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies) has been proposed, the directors of the company shall —

- (a) if a meeting of the members of the company by resolution so directs, instruct such accountants or solicitors or both as are named in the resolution to report on the proposals and forward their report or reports to the directors as soon as possible; and

(b) make such report or reports available at the registered office of the company for inspection by the shareholders and creditors of the company at least 7 days before the date of any meeting ordered by the Court to be summoned as provided in subsection (1).

15/84.

(9) Every company which makes default in complying with subsection (6) or (8) and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000.

Power of Court to restrain proceedings.

(10) Where no order has been made or resolution passed for the winding up of a company and any such compromise or arrangement has been proposed between the company and its creditors or any class of such creditors, the Court may, in addition to any of its powers, on the application in a summary way of the company or of any member or creditor of the company restrain further proceedings in any action or proceeding against the company except by leave of the Court and subject to such terms as the Court imposes.

(11) In this section —

“arrangement” includes a reorganisation of the share capital of a company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both these methods;

“company” means any corporation or society liable to be wound up under this Act. [176

Information as to compromise with creditors and members.
U.K. s. 207.
Aust. s. 182.

211.—(1) Where a meeting is summoned under section 210, there shall —

(a) with every notice summoning the meeting which is sent to a creditor or member, be sent also a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors, whether as directors or as members or as creditors of the company or otherwise, and the effect thereon of the compromise or arrangement in so far as it is different from the effect on the like interests of other persons; and

(b) in every notice summoning the meeting which is given by advertisement, be included either such

a statement or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement.

(2) Where the compromise or arrangement affects the rights of debenture holders, the statement shall give the like explanation with respect to the trustee for the debenture holders as, under subsection (1), a statement is required to give with respect to the directors.

(3) Where a notice given by advertisement includes a notification that copies of such a statement can be obtained, every creditor or member entitled to attend the meeting shall on making application in the manner indicated by the notice be furnished by the company free of charge with a copy of the statement.

(4) Each director and each trustee for debenture holders shall give notice to the company of such matters relating to himself as may be necessary for the purposes of this section within 7 days of the receipt of a request in writing for information as to such matters.

(5) Where default is made in complying with any requirement of this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months. 15/84.

(6) For the purpose of subsection (5) the liquidator of the company and any trustee for debenture holders shall be deemed to be an officer of the company.

(7) Notwithstanding subsection (5), a person shall not be liable under that subsection if he shows that the default was due to the refusal of any other person, being a director or trustee for debenture holders, to supply the necessary particulars as to his interests. [177

212.—(1) Where an application is made to the Court under this Part for the approval of a compromise or arrangement and it is shown to the Court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies and that under the scheme the whole or

Provisions for facilitating reconstruction and amalgamation of companies.
U.K. s. 208.
Aust. s. 183.

any part of the undertaking or the property of any company concerned in the scheme (referred to in this section as the transferor company) is to be transferred to another company (referred to in this section as the transferee company), the Court may either by the order approving the compromise or arrangement or by any subsequent order provide for all or any of the following matters:

- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of the transferor company;
- (b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;
- (c) the continuation by or against the transferee company of any legal proceedings pending by or against the transferor company;
- (d) the dissolution, without winding up, of the transferor company;
- (e) the provision to be made for any persons who, within such time and in such manner as the Court directs, dissent from the compromise or arrangement;
- (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(2) Where an order made under this section provides for the transfer of property or liabilities, then by virtue of the order that property shall be transferred to and vest in, and those liabilities shall be transferred to and become the liabilities of, the transferee company, free in the case of any particular property if the order so directs, from any charge which is by virtue of the compromise or arrangement to cease to have effect.

15/84.

(3) Where an order is made under this section, every company in relation to which the order is made shall lodge within 7 days of the making of the order —

- (a) an office copy of the order with the Registrar; and

- (b) where the order relates to land, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land,

and every company which makes default in complying with this section and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty.

(4) No vesting order, referred to in this section, shall have any effect or operation in transferring or otherwise vesting land until the appropriate entries are made with respect to the vesting of that land by the appropriate authority.

- (5) In this section —

“liabilities” includes duties;

“property” includes property, rights and powers of every description.

(6) Notwithstanding section 210 (11), “company” in this section does not include any company other than a company as defined in section 4. [178

213.—(1) This section, section 214 and the Tenth Schedule apply to and in relation to all natural persons, whether resident in Singapore or not and whether citizens of Singapore or not, and to all bodies corporate or unincorporated, whether incorporated or carrying on business in Singapore or not, and extend to acts done or omitted to be done outside Singapore, and any reference to an offeror corporation or a corporation in this section, section 214 and in the Tenth Schedule shall be construed, with such modifications and qualifications as may be necessary, so as to include a reference to a natural person.

Take-over
offers.
49/73
15/84.

(2) In this section, section 214 and in the Tenth Schedule — 15/84:

“offeree company”, in relation to a take-over scheme or a take-over offer, means a public company to shares in which the scheme or offer relates;

“offeror corporation”, in relation to a take-over scheme or a take-over offer, means the corporation by or on behalf of which any take-over offer

under the scheme, or the take-over offer, is made or to be made;

“take-over offer” means an offer for the acquisition of shares under a take-over scheme;

“take-over scheme” means a scheme involving the making of offers for the acquisition by or on behalf of a corporation —

(a) of all the shares in another company or of all the shares of a particular class in another company; or

(b) of any shares in another company which results in the first-mentioned corporation acquiring effective control of that other company.

15/84.

(3) For the purposes of this section, “acquiring effective control” means the acquiring of shares in an offeree company which (together with shares, if any, already held by the offeror corporation or by any other corporation that is deemed by virtue of section 6 to be related to that corporation) carry the right to exercise, or control the exercise of not less than 25% of the votes attached to the voting shares of that company even though such acquisition does not confer de facto control.

15/84.

(4) A take-over offer shall not be made unless —

(a) the offeror corporation has, not earlier than 28 days and not later than 14 days, before the offer is made, given or caused to be given to the offeree company notice in writing of the take-over scheme containing particulars of the terms of the take-over offers to be made under the scheme, together with a statement that complies with the requirements set out in Part B of the Tenth Schedule; and

(b) the offer complies with the requirements set out in Part A of that Schedule and there is attached to the offer —

(i) a copy of the statement given or caused to be given by the offeror corporation to the offeree company in pursuance of paragraph (a); and

- (ii) if the offeree company gives or causes to be given to the offeror corporation a statement in pursuance of subsection (5) (a) — a copy of that statement.

(5) Where an offeree company receives a notice and statement given in pursuance of subsection (4), the offeree company shall either — 15/84.

- (a) give or cause to be given to the offeror corporation, within 14 days after the receipt of the notice and statement, a statement in writing that complies with the requirements set out in Part C of the Tenth Schedule; or
- (b) give or cause to be given to each holder of shares in the offeree company to which the take-over scheme relates, within 14 days after take-over offers are first made to shareholders under the take-over scheme, such a statement in writing.

(6) A statement, given or caused to be given by an offeree company in pursuance of subsection (5), may contain such information in addition to that required by Part C of the Tenth Schedule as the directors of the offeree company think fit.

(7) Where take-over offers are made under a take-over scheme, the offeror corporation shall forthwith give notice in writing to the offeree company that offers have been made under the scheme and of the date of the offers.

(8) (a) (i) The offeror corporation shall, on the same day that it gives or causes to be given to the offeree company a notice in writing pursuant to subsection (4) or section 214 (4) and on the same day that it despatches the take-over offer, lodge a copy of that notice and take-over offer with the Registrar and with a stock exchange, if the offeree company is quoted on the stock exchange. 15/84.

(ii) The offeree company shall on the same day that it gives or causes to be given a statement in writing pursuant to subsection (5) (a) lodge a copy of that statement with the Registrar and with a stock exchange, if the offeree company is quoted on the stock exchange.

(b) The Registrar shall, on the application of the offeror corporation or the offeree company, as the case may be,

have power to permit the offeror corporation or the offeree company at any time prior to the offer being made —

- (i) to amend any such notice or statement in writing lodged with him pursuant to paragraph (a); or
- (ii) to substitute a fresh notice or statement in writing for an earlier notice or statement lodged with him pursuant to paragraph (a),

in such manner and subject to such terms as he considers are justified by the circumstances of the case but in any such event time shall begin to run from the date of the first notice or statement in writing.

15/84.

(9) (a) A corporation which has no real intention to make an offer in the nature of a take-over offer shall not give notice or publicly announce that it intends to make a take-over offer whether under this Act or otherwise.

(b) A corporation shall not make a take-over offer or give notice or publicly announce that it intends to make such an offer if it has no reasonable or probable grounds for believing that it will be able to perform its obligations if the offer is accepted.

(c) Every corporation which has a firm intention to make a take-over offer shall make a public announcement of that intention in the newspapers giving the terms of the offer and the identity of the offeror and shall take steps to give or cause to be given the notice in writing of the take-over scheme referred to in subsection (4) (a) to the offeree company so that the notice is given as soon as practicable after the public announcement is made and in any event within 14 days of such announcement unless the Registrar agrees to an extension beyond this period in the special circumstances of any particular case.

In this paragraph, a corporation shall be conclusively presumed to have a firm intention to make a take-over offer from the date that it acquires effective control of an offeree company, but nothing in this paragraph shall prevent an inference of a firm intention being drawn where the percentage of shares acquired in an offeree company is below that needed for acquiring effective control.

15/84.

(10) If a take-over offer under a take-over scheme is withdrawn, a contract arising from the acceptance of any other take-over offer under the take-over scheme is

voidable at the option of a shareholder of an offeree company who has accepted that other take-over offer by notice in writing given to the offeror corporation not later than one month after the first-mentioned take-over offer is withdrawn.

(11) Notwithstanding anything in the articles of an offeree company or in the document by which an offeree company is constituted, the directors of the offeree company are entitled to have refunded to them by the company any expenses reasonably incurred by them in the interests of the members of the company as a whole in relation to a take-over scheme involving the acquisition of the shares in the company. 15/84.

(12) (a) Where a take-over offer is made in contravention of this section or an offeror corporation fails to comply with subsections (7), (8) and (9), the offeror corporation and every officer of the corporation who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years. 15/84.

(b) Where an offeree company fails to comply with subsection (5), the offeree company, and every officer of that company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years.

(13) Sections 55 and 56 shall apply to and in relation to a statement given by an offeror corporation to an offeree company in pursuance of subsection (4) (a), and to any copy of such a statement, as if —

- (a) each reference in those sections to a prospectus were a reference to such a statement or a copy of such a statement;
- (b) the reference in section 55 (1) to persons who subscribe for or purchase any shares or debentures were a reference to a person who accepts a take-over offer; and
- (c) each reference in those sections to the allotment or sale of shares or debentures were a reference to the acceptance of a take-over offer.

(14) Regulations may be made varying the requirements

set out in any part of the Tenth Schedule either by omitting or altering any such requirement or by adding additional requirements and any reference in this section to the requirements of a part of the Tenth Schedule shall be read as a reference to those requirements as so varied from time to time.

15/84.

(15) The Minister may, by order, exempt a corporation or an individual, as specified in the order and subject to such terms and conditions, if any, as are specified in the order, from compliance with all or any of the provisions of this section or of the requirements set out in the Tenth Schedule where, in any particular case, he is satisfied that compliance therewith is inappropriate or would impose an unreasonable burden on the corporation or individual or is not in the public interest.

49/73.

(16) Regulations may be made requiring the lodging with the Registrar or a stock exchange, or the body, panel or committee that is specified in the notice referred to in subsection (17), or all of them of —

- (a) copies of any notice or statement given in pursuance of this section; or
- (b) notice in the prescribed form and containing such particulars as are prescribed of the giving of or of the intention to give such a notice or statement.

49/73.

(17) For the more effective administration, supervision and control of take-overs and mergers the Minister may if he thinks it necessary in the public interest or for the protection of investors by notice direct, from such date as may be specified in the notice, that —

- (a) all parties concerned in a take-over or merger transaction shall, in addition to complying with this section and the Tenth Schedule, be bound to abide by such general principles and rules of a non-statutory nature as he may specify in the notice; and
- (b) such body, panel or committee as the Minister may designate in the notice shall administer and enforce those general principles and rules.

10/74
15/84.

(18) (a) The Minister, pursuant to a notice made under subsection (17), has specified that a non-statutory code

known as the Singapore Code on Take-overs and Mergers (referred to in this section as the Code) shall have effect in relation to take-over and merger transactions and the Code shall be administered and enforced by a body known as the Securities Industry Council.

(b) The Minister, on the advice of the Securities Industry Council, may from time to time revise the Code by varying, amending or adding to the provisions thereof and any revision thereof shall be published in the *Gazette*.

(c) The Securities Industry Council may from time to time issue rulings on the interpretation of the general principles and rules in the Code and lay down the practice to be followed by parties concerned in a take-over or merger transaction and such rulings or practice shall be final and not be capable of being challenged in any court.

(d) A failure of any party concerned in a take-over or merger transaction to observe any of the provisions of the Code shall not of itself render that party liable to criminal proceedings but any such failure may, in any proceedings whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or to negative any liability which is in question in the proceedings.

(e) Nothing in paragraph (d) shall be construed as preventing the Securities Industry Council from invoking such sanctions (including public censure) as it may decide in relation to breaches of the Code by parties to a take-over or merger transaction.

(f) Where the Securities Industry Council has reason to believe that any party to a take-over or merger transaction or any financial adviser who is concerned in the take-over or merger is in breach of the provisions of the Code or is otherwise believed to have committed acts of misconduct in relation to or connected with a take-over or merger transaction, the Securities Industry Council shall have power to enquire into the suspected breach or misconduct and for this purpose may summon any person to give evidence on oath or affirmation, which it is hereby authorised to administer, or produce any document or material necessary for the purpose of the enquiry.

(g) The Securities Industry Council shall not in the absence of malice on its part be liable to any action for

defamation at the suit of any person in respect of any statements made in the discharge of its functions under the Code whether the statements are made orally or in writing. This paragraph does not restrict or affect any other right or privilege or immunity that the Securities Industry Council has as a defendant in an action for defamation. [179

Variation of
take-over
offers.
15/84.

214.—(1) An offeror corporation may vary a take-over offer by increasing the consideration offered either in relation to the whole or part thereof.

(2) An offeror corporation may vary a take-over offer by extending the period during which it remains open for acceptance and where an offeror corporation so varies a take-over offer which is conditional upon acceptances being received in respect of a minimum percentage of shares it may vary the date specified in the take-over for declaring the take-over offer to be unconditional as required by paragraph 4 (a) of Part A of the Tenth Schedule (so long as such varied date is not later than 60 days from the date of despatch of the offer, unless the Registrar in a competitive situation agrees to an extension beyond this period) and it may vary the further period during which the take-over offer is, in accordance with paragraph 4 (b), open for acceptance after the take-over offer is declared unconditional (provided such further period is not less than 14 days after the varied date on which the offer would otherwise have expired).

(3) Where the consideration offered for the shares proposed to be acquired under the take-over offer is varied under subsection (1), each person whose shares are acquired before or after the variation under a like take-over offer is entitled to receive consideration as varied accordingly.

(4) Where an offeror corporation varies a take-over offer, it shall forthwith give to the offeree company and to each shareholder of the offeree company to whom a like take-over offer has been made a notice in writing in accordance with subsection (5) and shall forthwith lodge with the Registrar and a stock exchange, (if such corporation is a corporation that is quoted on that stock exchange) a copy of that notice.

(5) The notice shall set out in an appropriate form particulars of such modifications of the Part B statement

given under section 213 (4) (a) as are necessary having regard to the variations.

(6) For the avoidance of doubt it is hereby declared that when a take-over offer is varied in accordance with this section, it shall not be necessary for the offeror corporation to give or cause to be given to the offeree company a fresh notice in writing of the take-over scheme pursuant to section 213 (4) and the take-over as varied shall be deemed to be part of the take-over scheme. [179A

215.—(1) Where a scheme or contract involving the transfer of all of the shares or all of the shares in any particular class in a company (referred to in this section as the transferor company) to another company or corporation (referred to in this section as the transferee company) has, within 4 months after the making of the offer in that behalf by the transferee company, been approved as to the shares or as to each class of shares whose transfer is involved by the holders of not less than 90% in nominal value of those shares or of the shares of that class (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary), the transferee company may at any time within two months, after the offer has been so approved, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares; and when such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given or within 14 days of a statement being supplied to a dissenting shareholder pursuant to subsection (2) (whichever is the later) the Court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms which, under the scheme or contract the shares of the approving shareholders are to be transferred to the transferee company or if the offer contained two or more alternative sets of terms upon the terms which were specified in the offer as being applicable to dissenting shareholders.

Power to acquire shares of shareholders dissenting from scheme or contract approved by 90% majority.
U.K. s. 209.
Aust. s. 185.
15/84.

(2) Where a transferee company has given notice to any dissenting shareholder that it desires to acquire his shares, the dissenting shareholder shall be entitled to require the company by a demand in writing served on that company, within one month from the date on which the notice was

given, to supply him with a statement in writing of the names and addresses of all other dissenting shareholders as shown in the register of members, and the transferee company shall not be entitled or bound to acquire the shares of the dissenting shareholders until 14 days after the posting of the statement of such names and addresses to the dissenting shareholder.

(3) Where, in pursuance of any such scheme or contract, shares in a company are transferred to another company or its nominee and those shares together with any other shares in the first-mentioned company held by, or by a nominee for, the transferee company or its subsidiary at the date of the transfer comprise or include 90% in nominal value of the shares in the first-mentioned company or of any class of those shares, then —

(a) the transferee company shall within one month from the date of the transfer (unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement) give notice of that fact in the prescribed manner to the holders of the remaining shares or of the remaining shares of that class who have not assented to the scheme or contract; and

(b) any such holder may within 3 months from the giving of the notice to him require the transferee company to acquire the shares in question,

and where a shareholder gives notice under paragraph (b) with respect to any shares, the transferee company shall be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to it, or on such other terms as are agreed or as the Court on the application of either the transferee company or the shareholder thinks fit to order.

(4) Where a notice has been given by the transferee company under subsection (1) and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, after the expiration of one month after the date on which the notice has been given or, after 14 days after a statement has been supplied to a dissenting shareholder pursuant to subsection (2) or if an application to the Court by the dissenting

shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company together with an instrument of transfer executed, on behalf of the shareholder by any person appointed by the transferee company, and on its own behalf by the transferee company, and pay, allot or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares.

(5) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company in trust for the several persons entitled to the shares in respect of which they were respectively received.

(6) Where any consideration other than cash is held in trust by a company for any person under this section, it may, after the expiration of two years and shall before the expiration of 10 years from the date on which such consideration was allotted or transferred to it, transfer such consideration to the Official Receiver.

(7) The Official Receiver shall sell or dispose of any consideration so received in such manner as he thinks fit and shall deal with the proceeds of such sale or disposal as if it were moneys paid to him in pursuance of section 322.

(8) In this section, "dissenting shareholder" includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract. [180

216.—(1) Any member or holder of a debenture of a company or, in the case of a declared company under Part IX, the Minister may apply to the Court for an order under this section on the ground —

- (a) that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or holders of debentures

Remedy in cases of oppression. U.K. s. 210. Aust. s. 186.

including himself or in disregard of his or their interests as members, shareholders or holders of debentures of the company; or

- (b) that some act of the company has been done or is threatened or that some resolution of the members, holders of debentures or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more of the members or holders of debentures (including himself).

15/84.

(2) If on such application the Court is of the opinion that either of such grounds is established the Court may, with a view to bringing to an end or remedying the matters complained of, make such order as it thinks fit and, without prejudice to the generality of the foregoing, the order may —

- (a) direct or prohibit any act or cancel or vary any transaction or resolution;
- (b) regulate the conduct of the affairs of the company in future;
- (c) authorise civil proceedings to be brought in the name of or on behalf of the company by such person or persons and on such terms as the Court may direct;
- (d) provide for the purchase of the shares or debentures of the company by other members or holders of debentures of the company or by the company itself;
- (e) in the case of a purchase of shares by the company provide for a reduction accordingly of the company's capital; or
- (f) provide that the company be wound up.

(3) Where an order that the company be wound up is made pursuant to subsection (2) (f), the provisions of this Act relating to winding up of a company shall, with such adaptations as are necessary, apply as if the order had been made upon a petition duly presented to the Court by the company.

(4) Where an order under this section makes any alteration in or addition to any company's memorandum or

articles, then, notwithstanding anything in any other provision of this Act, but subject to the provisions of the order, the company concerned shall not have power, without the leave of the Court, to make any further alteration in or addition to the memorandum or articles inconsistent with the provisions of the order; but subject to the foregoing provisions of this subsection the alterations or additions made by the order shall be of the same effect as if duly made by resolution of the company.

(5) An office copy of any order made under this section shall be lodged by the applicant with the Registrar within 14 days after the making of the order.

(6) Any person who fails to comply with subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty. 15/84.

(7) This section shall apply to a person who is not a member of a company but to whom shares in the company have been transferred or transmitted by operation of law as it applies to members of a company; and references to a member or members shall be construed accordingly. [181 15/84.

PART VIII

RECEIVERS AND MANAGERS

217.—(1) The following shall not be qualified to be appointed and shall not act as receiver of the property of a company:

- (a) a corporation;
- (b) an undischarged bankrupt;
- (c) a mortgagee of any property of the company, an auditor of the company or a director, secretary or employee of the company or of any corporation which is a mortgagee of the property of the company;
- (d) any person who is neither an approved liquidator nor the Official Receiver.

(2) Nothing in subsection (1) (a) or (d) shall apply to any corporation authorised by any written law to act as receiver of the property of a company.

(3) Nothing in this section shall disqualify a person from acting as receiver of the property of a company if acting

Disqualification for appointment as receiver.
U.K. ss. 366, 367.
Aust. s. 187.
15/84.

under an appointment validly made before the commencement of this Act. [182

Liability of receiver.
U.K. s. 369.
Aust. s. 188.

218.—(1) Any receiver or other authorised person entering into possession of any assets of a company for the purpose of enforcing any charge shall, notwithstanding any agreement to the contrary, but without prejudice to his rights against the company or any other person, be liable for debts incurred by him in the course of the receivership or possession for services rendered, goods purchased or property hired, leased, used or occupied.

(2) Subsection (1) shall not be so construed as to constitute the person entitled to the charge a mortgagee in possession.

Application for directions.

(3) A receiver or manager of the property of a company may apply to the Court for directions in relation to any matter arising in connection with the performance of his functions.

(4) Where a receiver or manager has been appointed to enforce any charge for the benefit of holders of debentures of the company, any such debenture holder may apply to the Court for directions in relation to any matter arising in connection with the performance of the functions of the receiver or manager. [183

Power of Court to fix remuneration of receivers or managers.
U.K. s. 371.
Aust. s. 189.

219.—(1) The Court may, on application by the liquidator of a company, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver or manager of the property of the company.

(2) The power of the Court shall, where no previous order has been made with respect thereto —

- (a) extend to fixing the remuneration for any period before the making of the order or the application therefor;
- (b) be exercisable notwithstanding that the receiver or manager has died or ceased to act before the making of the order or the application therefor; and
- (c) where the receiver or manager has been paid or has retained for his remuneration for any period

before the making of the order any amount in excess of that fixed for that period, extend to requiring him or his personal representatives to account for the excess or such part thereof as may be specified in the order.

(3) The power conferred by subsection (2) (c) shall not be exercised as respects any period before the making of the application for the order unless in the opinion of the Court there are special circumstances making it proper for the power to be so exercised.

(4) The Court may from time to time, on an application made either by the liquidator or by the receiver or manager, vary or amend an order made under this section. [184

220. Where an application is made to the Court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the Court, the liquidator may be so appointed. [185

Appointment of liquidator as receiver.
U.K. s. 368.
Aust. s. 190.

221.—(1) If any person obtains an order for the appointment of a receiver or manager of the property of a company or of the property in Singapore of any other corporation, or appoints such a receiver or manager under any powers contained in any instrument, he shall within 7 days after he has obtained the order or made the appointment lodge notice of the fact with the Registrar.

Notification of appointment of receiver.
U.K. s. 102.
Aust. s. 191.

(2) Where any person appointed receiver or manager of the property of a company or other corporation under the powers contained in any instrument ceases to act as such he shall within 7 days thereafter lodge with the Registrar notice to that effect.

(3) Every person who makes default in complying with the requirements of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty. [186

15/84.

222.—(1) Where a receiver or manager of the property of a corporation has been appointed, every invoice order for goods or business letter issued by or on behalf of the corporation or the receiver or manager or the liquidator of the corporation, being a document on or in which the name

Statement that receiver appointed.
U.K. s. 370.
Aust. s. 192.

of the corporation appears, shall contain a statement immediately following the name of the corporation that a receiver or manager has been appointed.

(2) If default is made in complying with this section, the corporation and every officer and every liquidator of the corporation and every receiver or manager who knowingly and wilfully authorises or permits the default shall be guilty of an offence. [187

Provisions as to information where receiver or manager appointed.
U.K. s. 372.
Aust. s. 193.

223.—(1) Where a receiver or manager of the property of a company (referred to in this section and in section 224 as the receiver) is appointed —

- (a) the receiver shall forthwith send notice to the company of his appointment;
- (b) there shall, within 14 days after receipt of the notice, or such longer period as may be allowed by the Court or by the receiver, be made out and submitted to the receiver in accordance with section 224 a statement in the prescribed form as to the affairs of the company; and
- (c) the receiver shall within one month after receipt of the statement —
 - (i) lodge with the Registrar, a copy of the statement and of any comments he sees fit to make thereon;
 - (ii) send to the company, a copy of any such comments as aforesaid, or if he does not see fit to make any comment, a notice to that effect; and
 - (iii) where the receiver is appointed by or on behalf of the holders of debentures of the company send to the trustees, if any, for those holders, a copy of the statement and his comments thereon.

(2) Subsection (1) shall not apply in relation to the appointment of a receiver or manager to act with an existing receiver or manager or in place of a receiver or manager dying or ceasing to act, except that, where that subsection applies to a receiver or manager who dies or ceases to act before that subsection has been fully complied with, the references in paragraphs (b) and (c) thereof to the receiver

shall (subject to subsection (3)) include references to his successor and to any continuing receiver or manager.

(3) Where the company is being wound up, this section and section 224 shall apply notwithstanding that the receiver or manager and the liquidator are the same person, but with any necessary modifications arising from that fact.

(4) If any person makes default in complying with any of the requirements of this section, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty. [188 15/84.

224.—(1) The statement as to the affairs of a company required by section 223 to be submitted to the receiver shall show as at the date of the receiver's appointment the particulars of the company's assets, debts and liabilities, the names and addresses of its creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be prescribed. Special provisions as to statement submitted to receiver. U.K. s. 373. Aust. s. 194.

(2) The statement shall be submitted by, and be verified by affidavit of, one or more of the persons who were at the date of the receiver's appointment the directors of the company and by the person who was at that date the secretary of the company, or by such of the persons, hereafter in this subsection mentioned, as the receiver may require to submit and verify the statement, that is to say —

- (a) persons who are or have been officers;
- (b) persons who have taken part in the formation of the company at any time within one year before the date of the receiver's appointment;
- (c) persons who are in the employment of the company, or have been in the employment of the company within that year, and are in the opinion of the receiver capable of giving the information required;
- (d) persons who are or have been within that year officers of or in the employment of a corporation which is, or within that year was, an officer of the company to which the statement relates.

(3) Any person making the statement and affidavit shall be allowed and shall be paid by the receiver (or his

successor) out of his receipts, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the receiver (or his successor) may consider reasonable, subject to an appeal to the Court.

15/84.

(4) If any person makes default in complying with the requirements of this section, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

(5) References in this section to the receiver's successor shall include a continuing receiver or manager. [189

Lodging of
accounts of
receivers and
managers.
U.K. s. 374.
Aust. s. 195.

225.—(1) Every receiver or manager of the property of a company or of the property in Singapore of any other corporation shall —

- (a) within one month after the expiration of the period of 6 months from the date of his appointment and of every subsequent period of 6 months and within one month after he ceases to act as receiver or manager, lodge with the Registrar a detailed account in the prescribed form showing —
- (i) his receipts and his payments during each period of 6 months, or, where he ceases to act as receiver or manager, during the period from the end of the period to which the last preceding account related or from the date of his appointment, as the case may be, up to the date of his so ceasing;
 - (ii) the aggregate amount of those receipts and payments during all preceding periods since his appointment; and
 - (iii) where he has been appointed pursuant to the powers contained in any instrument, the amount owing under that instrument at the time of his appointment, in the case of the first account, and at the expiration of every 6 months after his appointment and, where he has ceased to act as receiver or manager at the date of his so ceasing, and his estimate of the total value of all assets of the company

or other corporation which are subject to that instrument; and

(b) before lodging such account, verify by affidavit all accounts and statements referred to therein.

(2) The Registrar may, of his own motion or on the application of the company or other corporation or a creditor, cause the accounts to be audited by an approved company auditor appointed by the Registrar and for the purpose of the audit the receiver or manager shall furnish the auditor with such vouchers and information as he requires and the auditor may at any time require the production of and inspect any books of account kept by the receiver or manager or any document or other records relating thereto.

(3) Where the Registrar causes the accounts to be audited upon the request of the company or other corporation or a creditor, he may require the applicant to give security for the payment of the cost of the audit.

(4) The costs of an audit under subsection (2) shall be fixed by the Registrar and be paid by the receiver unless the Registrar otherwise determines.

(5) Every receiver or manager who makes default in complying with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty. 15/84.
[190

226.—(1) Where a receiver is appointed on behalf of the holders of any debentures of a company secured by a floating charge or possession is taken by or on behalf of debenture holders of any property comprised in or subject to a floating charge, then, if the company is not at the time in the course of being wound up, debts which in every winding up are preferential debts and are due by way of wages, salary, vacation leave or superannuation or provident fund payments and any amount which in a winding up is payable in pursuance of section 328 (4) or (6) shall be paid out of any assets coming to the hands of the receiver or other person taking possession in priority to any claim for principal or interest in respect of the debentures and shall be paid in the same order of priority as is prescribed by that section in respect of those debts and amounts.

Payments of certain debts out of assets subject to floating charge in priority to claims under charge.
U.K. s. 94.
Aust. s. 196.

(2) For the purposes of subsection (1), the references in section 328 (1) (b), (c), (d) and (e) to the commencement of the winding up shall be read as a reference to the date of the appointment of the receiver or of possession being taken as aforesaid, as the case requires.

(3) Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors. [191

Enforcement
of duty of
receiver, etc.,
to make
returns.
U.K. s. 375.
Aust. s. 197.

227.—(1) If any receiver or manager of the property of a company who has made default in making or lodging any return, account or other document or in giving any notice required by law fails to make good the default within 14 days after the service on him by any member or creditor of the company or trustee for debenture holders of a notice requiring him to do so, the Court may, on an application made for the purpose by the person who has given the notice, make an order directing him to make good the default within such time as is specified in the order.

(2) If it appears that any receiver or manager of the property of a company has misapplied or retained or become liable or accountable for any money or property of the company or been guilty of any misfeasance or breach of trust or duty in relation to the company, the Court may on the application of any creditor or contributory or of the liquidator examine into the conduct of such receiver or manager and compel him to repay or restore the money or property or any part thereof with interest at such rate as the Court thinks just or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust or duty as the Court thinks just.

(3) This section shall have effect notwithstanding that the offence is one for which the offender is criminally liable. [192

PART IX

INVESTIGATIONS

Application
of this Part.
Aust. s. 168
(1).
62/70.

228. This Part does not authorise any investigation into the insurance business of a company or into the business of a banking corporation, unless specifically provided for in this Part. [193

- 229.** In this Part, unless the contrary intention appears —
- “affairs”, in relation to a company, includes —
- (a) the promotion, formation, membership control, trading, dealings, business and property of the company;
 - (b) the ownership of shares in debentures of and interests issued by the company;
 - (c) the ascertainment of the persons who are or have been financially interested in the success or failure or apparent success or failure of the company or are or have been able to control or materially to influence the policy of the company; and
 - (d) the circumstances under which a person acquired or disposed of or became entitled to acquire or dispose of shares in debentures of or interests issued by the company;
- “company” includes a foreign company which is a declared company;
- “declared company” means a company or foreign company which the Minister has by order declared to be a company to which this Part applies;
- “officer or agent”, in relation to a corporation, includes —
- (a) a director, banker, solicitor or auditor of the corporation;
 - (b) a person who at any time —
 - (i) has been a person referred to in paragraph (a); or
 - (ii) has been otherwise employed or appointed by the corporation;
 - (c) a person who —
 - (i) has in his possession any property of the corporation;
 - (ii) is indebted to the corporation; or
 - (iii) is capable of giving information concerning the promotion, formation, trading, dealings, affairs or property of the corporation; and

Interpretation.
Aust. ss. 168
(2), 172 (1).
62/70.

- (d) where there are reasonable grounds for suspecting or believing that a person is a person referred to in paragraph (c) — that person. [194

Power to declare company or foreign company.
Aust. s. 172
(2), (3).

230. The Minister may by order declare that a company or foreign company is a company to which this Part applies if he is satisfied —

- (a) that a prima facie case has been established that, for the protection of the public, the holders of interests to which Division 5 of Part IV apply or the shareholders or creditors of the company or foreign company, it is desirable that the affairs of the company or foreign company should be investigated under this Part;
- (b) that it is in the public interest that allegations of fraud, misfeasance or other misconduct by persons who are or have been concerned with the formation or management of the company or foreign company should be investigated under this Part;
- (c) that for any other reason it is in the public interest that the affairs of the company or foreign company should be investigated under this Part; or
- (d) in the case of a foreign company, that the appropriate authority of another country has requested that a declaration be made pursuant to this section in respect of the company. [195

Appointment of inspectors for declared companies.
Aust. s. 173.

231.—(1) Where a company or foreign company has been declared to be a company to which this Part applies, the Minister shall appoint one or more inspectors to investigate the affairs of that company, and to report his opinion thereon to the Minister.

19/75.

(2) An inspector appointed under subsection (1) may, at any time in the course of his investigation, without the necessity of making an interim report, inform the Minister of matters coming to his knowledge as a result of the investigation which tend to show that an offence has been committed; and the Minister may thereafter take such steps as he may consider fit.

(3) The expenses of and incidental to an investigation of a declared company shall be defrayed in the first instance out of moneys provided by Parliament.

(4) Where the Minister is of the opinion that the whole or any part of the expenses of and incidental to the investigation should be paid by the company or by any person who requested the appointment of the inspector the Minister may by notification in the *Gazette* direct that the expenses be so paid.

(5) A notification under subsection (4) may specify the time or times and the manner in which the payment of the expenses shall be made.

(6) Where a notification has been published by the Minister under subsection (5) the persons named in the notification to the extent therein specified shall be liable to reimburse the Minister in respect of such expenses.

(7) Action to recover any such expenses may be taken in the name of the Government in any court of competent jurisdiction.

(8) Where a notification under subsection (4) has been published for the payment of the whole or part of the expenses by a company and the company is in liquidation or subsequently goes into liquidation the expenses so ordered to be paid by the company shall be deemed to be part of the costs and expenses of the winding up for the purposes of section 328 (1) (a).

(9) The report of the inspector may if he thinks fit, and shall, if the Minister so directs, include a recommendation as to the terms of the notification which he thinks proper in the light of his investigation to be given by the Minister under subsection (4). [196

232.—(1) The Minister may appoint one or more inspectors to investigate the affairs of a company or such aspects of the affairs of a company as are specified in the instrument of appointment and to report thereon in such manner as the Minister directs —

Investigation of affairs of company by inspectors at direction of Minister.
Aust. s. 169.

(a) in the case of a company having a share capital, on the application of —

(i) not less than 200 members or of members holding not less than 10% of the shares issued; or

(ii) holders of debentures holding not less than 20% in nominal value of debentures issued; or

(b) in the case of a company not having a share capital, on the application of not less than 20% in number of the persons on the company's register of members.

(2) An application under this section shall be supported by such evidence as the Minister requires as to the reasons for the application and the motives of the applicants in requiring the investigation, and the Minister may before appointing an inspector require the applicants to give security for such amount as he thinks fit for payment of the cost of the investigation. [197

As to reports
of inspectors.
Aust. s. 169.

233.—(1) An inspector appointed by the Minister may, and if so directed by the Minister shall, make interim reports to the Minister and on the conclusion of the investigation the inspector shall report his opinion on or in relation to the affairs that he has been appointed to investigate together with the facts upon which his opinion is based to the Minister, and a copy of the report shall be forwarded by the Minister to the registered office of the company, and a further copy shall at the request of the applicants be delivered to them.

(2) The Minister may, if he is of the opinion that it is necessary in the public interest to do so, cause the report to be printed and published.

(3) If from any reports of an inspector appointed by the Minister it appears to the Minister that the case is one in which a prosecution ought to be instituted he shall cause a prosecution to be instituted accordingly and all officers and agents of the company (other than the defendant in the proceedings) shall on being required by the Minister to do so give all assistance in connection with the prosecution which they are reasonably able to give.

(4) If from any report of an inspector appointed by the Minister it appears to the Minister that proceedings ought in the public interest to be brought by any company, dealt with by the report, for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation of that company or in the

management of its affairs or for the recovery of any property of the company which has been misapplied or wrongfully retained he may himself bring proceedings for that purpose in the name of the company. [198

234.—(1) A company (not being a declared company) may by special resolution appoint one or more inspectors to investigate its affairs.

Investigation by resolution of company. Aust. s. 170.

(2) On the conclusion of the investigation, the inspector shall report his opinion in such manner and to such persons as the company in general meeting directs.

(3) The appointment of an inspector or inspectors pursuant to this section shall cease and determine forthwith upon a company becoming a declared company. [199

235. Where an inspector thinks it necessary for the purposes of the investigation of the affairs of a company to investigate the affairs of a corporation which is or has at any relevant time been a corporation deemed to be related by virtue of section 6 to the company, he may, with the consent in writing of the Minister, investigate the affairs of that corporation. [199A

Investigation of affairs of related corporation. 62/70.

236.—(1) If an inspector appointed to investigate the affairs of a company thinks it necessary for the purposes of the investigation to investigate also the affairs of any other corporation which is or has at any relevant time been deemed to be or to have been related to that company by virtue of section 6, he shall have power to do so, and he shall report on the affairs of the other corporation so far as he thinks the results of the investigation thereof are relevant to the investigation of the affairs of the company.

Procedure and powers of inspector. Aust. s. 171 (1)–(7).

(2) Every officer and agent of a corporation the affairs of which are being investigated under this Part shall, if required by an inspector appointed under this Part, produce to the inspector all books and documents in his custody or power and shall give to the inspector all assistance in connection with the investigation which he is reasonably able to give.

(3) An inspector may, by notice in the prescribed form, require any officer or agent of any corporation whose affairs are being investigated pursuant to this Part to appear for

examination on oath or affirmation (which he is hereby authorised to administer) in relation to its business; and the notice may require the production of all books and documents in the custody or under the control of that officer or agent.

(4) An inspector who, pursuant to this section, requires the production of all books and documents in the custody or power or under the control of an officer or agent of any corporation whose affairs are being investigated under or pursuant to this Part —

- (a) may take possession of all such books and documents;
- (b) may retain all such books and documents for such time as he considers to be necessary for the purpose of the investigation; and
- (c) shall permit such corporation to have access at all reasonable times to all such books and documents so long as they are in his possession.

(5) If any officer or agent of any corporation, the affairs of which are being investigated pursuant to this Part, fails to comply with the requirements of any notice issued under subsection (3) or fails or refuses to answer any question which is put to him by an inspector with respect to the affairs of the corporation, the inspector may certify the failure or refusal under his hand to the Court, which may thereupon inquire into the case and, after hearing any witnesses against or on behalf of the alleged offender and any statement offered in defence, punish the offender in like manner as if he had been guilty of contempt of the Court.

(6) No person, who is or has formerly been an officer or agent of a corporation the affairs of which are being investigated under this Part, shall be entitled to refuse to answer any question which is relevant or material to the investigation on the ground that his answer might tend to incriminate him but if he claims that the answer to any question, might incriminate him and but for this subsection he would have been entitled to refuse to answer the question, the answer to the question shall not be used in any subsequent criminal proceedings except in the case of a charge against him for making a false statement in answer to that question.

(7) Except as expressly provided in subsection (6), any person shall be entitled to refuse to answer a question on the ground that the answer might tend to incriminate him.

(8) An inspector may cause notes of any examination under this Part to be recorded and reduced to writing and to be read to or by and signed by the person examined and any such signed notes may except in the case of any answer which that person would not have been required to give but for subsection (6) thereafter be used in evidence in any legal proceedings against that person. [200

237.—(1) The expenses of and incidental to an investigation by an inspector appointed pursuant to sections 232 and 243 (including the costs of any proceedings brought by the Minister in the name of the company), shall be paid by the company investigated or if the Minister so directs by the applicants or in part by the company and in part by the applicants.

As to costs of investigations.
Aust. s. 171 (8), (9).

(2) Notwithstanding subsection (1) —

- (a) if the company fails to pay the whole or any part of the sum which it is so liable to pay, the applicants shall make good the deficiency up to the amount by which the security given by them under this Part exceeds the amount, if any, which they have under subsection (1) been directed by the Minister to pay; and
- (b) any balance of the expenses not paid either by the company or the applicants shall be paid out of moneys provided by Parliament. [201

238. A copy of the report of any inspector appointed under this Part, certified as correct by the Minister, shall be admissible in any legal proceedings as evidence of the opinion of the inspector and of the facts upon which his opinion is based in relation to any matter contained in the report. [202

Report of inspector to be admissible in evidence.
Aust. s. 171 (10).

239.—(1) An inspector of a declared company may employ such persons as he considers necessary and in writing authorise any such person to do anything he could himself do, except to examine on oath or affirmation.

Powers of inspector in relation to a declared company.
Aust. s. 173.

(2) Any officer or agent of a corporation who —

- (a) refuses or fails to produce any book or document to any person who produces a written authority of an inspector given pursuant to subsection (1); or
- (b) refuses or fails to answer any question lawfully put to him by any such person,

shall be liable to be dealt with in the same manner as is provided in section 236 (5) for refusing or failing to comply with the request of an inspector. [203

Suspension of actions and proceedings by declared company.
Aust. s. 174.

240.—(1) On and after the appointment of an inspector in respect of any declared company until the expiration of 3 months after the inspector has presented his final report to the Minister, no action or proceeding shall without the consent of the Minister (which may be given generally or in a particular case and which may be given subject to such conditions and limitations as he thinks fit) be commenced or proceeded with in any Court —

- (a) by the company upon or in respect of any contract, bill of exchange or promissory note; or
- (b) by the holder or any other person in respect of any bill of exchange or promissory note made drawn or accepted by or issued, transferred, negotiated or endorsed by or to the company unless the holder or other person —
 - (i) at the time of the negotiation, transfer, issue, endorsement or delivery thereof to him gave therefor adequate pecuniary consideration; and
 - (ii) was not at the time of the negotiation, transfer, issue, endorsement or delivery thereof to him or at any time within 3 years before that time a member, officer, agent or employee of the company or the wife or husband of any member, officer, agent or employee of the company.

(2) Any action or proceeding which is commenced or proceeded with in contravention of this section shall be void and of no effect. [204

241.—(1) An application to the Court —

- (a) in the case of a company, for the winding up of the company; or
- (b) in the case of a foreign company, for the winding up so far as the assets of the company in Singapore are concerned of the affairs of the company,

Winding up
of company.
Aust. s. 175.

may be made on petition of the Minister at any time after a report has been made in respect of a declared company by an inspector whereupon the provisions of this Act shall with such adaptations as are necessary, apply as if —

- (c) in the case of a company, a winding up petition had been duly presented to the Court by the company; and
- (d) in the case of a foreign company, a petition for an order for the affairs of the company so far as assets in Singapore are concerned to be wound up in Singapore had been duly presented to the Court by a creditor or contributory of the company upon the liquidation of the company in the place in which it is incorporated.

(2) Where, in the case of a foreign company, on any petition under subsection (1) an order is made for the affairs of the company so far as assets in Singapore are concerned to be wound up in Singapore the company shall not carry on business or establish or keep a place of business in Singapore. [205

242.—(1) Any person who, with intent to defeat the purposes of this Part or to delay or obstruct the carrying out of an investigation under this Part —

Penalties.
Aust. s. 176.
15/84.

- (a) destroys, conceals or alters any book, document or record of or relating to a declared company; or
- (b) sends or attempts to send or conspires with any other person to send out of Singapore any such book, document or record or any property of any description belonging to or in the disposition or under the control of such a company,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years.

(2) If in any prosecution for an offence under this section it is proved that the person charged with the offence —

(a) has destroyed, concealed or altered any book, document or record of or relating to the company; or

(b) has sent or attempted to send or conspired to send out of Singapore any book, document or record or any property of any description belonging to or in the disposition or under the control of the company,

the onus of proving that in so doing he had not acted with intent to defeat the purposes of this Part or to delay or obstruct the carrying out of an investigation under this Part shall lie on him. [206

Appointment
and powers
of inspectors
to investigate
ownership of
company.
U.K. s. 172.
Aust. s. 177.

243.—(1) Where it appears to the Minister that there is good reason to do so, he may appoint one or more inspectors to investigate and report on the membership of any corporation, whether or not it is a declared company, and otherwise with respect to the corporation for the purpose of determining the true persons who are or have been financially interested in the success or failure, real or apparent, of the corporation or able to control or materially to influence the policy of the corporation.

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

(3) Where an application for an investigation under this section with respect to particular shares or debentures of a corporation is made to the Minister by members of the corporation, and the number of applicants or the amount of the shares held by them is not less than that required for an application for the appointment of an inspector under section 232, the Minister shall appoint an inspector to conduct the investigation unless he is satisfied that the application is vexatious, and the inspector's appointment shall not exclude from the scope of his investigation any matter which the application seeks to have included therein, except in so far as the Minister is satisfied that it is unreasonable for that matter to be investigated.

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

(5) For the purposes of any investigation under this section, the provisions of this Part with respect to the investigation of declared companies shall apply with the necessary modifications of references to the affairs of the corporation or to those of any other corporation, but so that —

- (a) this Part shall apply in relation to all persons who are or have been, or whom the inspector has reasonable cause to believe to be or to have been financially interested in the success or failure or the apparent success or failure of the corporation or any other corporation the membership of which is investigated with that of the corporation, or able to control or materially to influence the policy thereof, including persons concerned only on behalf of others, as they apply in relation to officers and agents of the corporation or of the other corporation, as the case may be; and
- (b) the Minister shall not be bound to furnish the corporation or any other person with a copy of any report by an inspector appointed under this section or with a complete copy thereof if he is of opinion that there is good reason for not divulging the contents of the report or of parts thereof, but shall cause to be kept by the Registrar a copy of the report or, as the case may be, the parts of the report, as respects which he is not of that opinion. [207

244.—(1) Where it appears to the Minister that there is good reason to investigate the ownership of any shares in or debentures of a corporation and that it is unnecessary to appoint an inspector for the purpose, he may require any person whom he has reasonable cause to believe —

- (a) to be or to have been interested in these shares or debentures; or

Power to require information as to persons interested in shares or debentures. 62/70.

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

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

62/70. (2) For the purposes of this section, a person shall be deemed to have an interest in a share or debenture if he has any right to acquire or dispose of the share or debenture or any interest therein or to vote in respect thereof, or if his consent is necessary for the exercise of any of the rights of other persons interested therein, or if other persons interested therein can be required or are accustomed to exercise their rights in accordance with his instructions.

62/70
15/84. (3) Any person who fails to give any information required of him under this section, or who in giving any such information makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

62/70. (4) This section shall apply to a banking corporation but nothing therein shall, subject to the provisions of the
Cap. 19. Banking Act, require disclosure by a banking corporation to the Minister of any information as to the affairs of any of its customers other than the corporation of which it is the banker.

49/73. (5) The Minister may by notification in the *Gazette* delegate his powers under this section either generally or in any particular case to a committee of a stock exchange that has been approved by him under any written law relating to the securities industry or to any body, panel or committee that has been established to advise him on matters connected with the securities industry.

49/73. (6) A committee of a stock exchange or any body, panel or committee referred to in subsection (5) in the discharge of its powers under that subsection shall keep the Minister informed of any information obtained under this section.

(7) Notwithstanding any delegation of his powers under this section, the Minister may exercise any of the powers conferred upon him under this section. 49/73.
[208

245.—(1) Where in connection with an investigation under section 243 or 244 it appears to the Minister that there is difficulty in finding out the relevant facts about any shares, whether issued or to be issued, and that the difficulty is due wholly or mainly to the unwillingness of the persons concerned or any of them to assist the investigation as required by this Act, the Minister may by order published in the *Gazette* direct that the shares are until further order subject to the following restrictions: Power to impose restrictions on shares or debentures. U.K. s. 174. Aust. s. 179.

- (a) that any transfer of those shares or any exercise of the right to acquire or dispose of those shares or in the case of unissued shares any transfer of the right to be issued therewith and any issue thereof, shall be void;
- (b) that no voting rights shall be exercisable in respect of those shares;
- (c) that no further shares shall be issued in right of those shares or in pursuance of any offer made to the holder thereof; and
- (d) that, except in a liquidation, no payment shall be made of any sums due from the company on those shares, whether in respect of capital or otherwise.

(2) Any order of the Minister directing that shares shall cease to be subject to the restrictions referred to in subsection (1) which is expressed to be made with a view to permitting a transfer of those shares may continue the application of subsection (1) (c) and (d), in relation to those shares, either in whole or in part, so far as those paragraphs relate to any right acquired or offer made before the transfer.

(3) Where any shares are for the time being subject to any restrictions referred to in subsection (1), any person who — 15/84.

- (a) having knowledge that the shares are subject to any such restrictions, exercises or purports to exercise any right to dispose of those shares, or of any right to be issued with the shares;

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

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

15/84.

(4) Where shares in any company are issued in contravention of the restrictions imposed pursuant to subsection (1) the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months.

(5) A prosecution shall not be instituted under this section except with the consent of the Public Prosecutor.

(6) This section shall apply in relation to debentures as it applies in relation to shares. [209

Inspectors
appointed in
other coun-
tries.
Aust. s. 180.

246. Where —

- (a) under a corresponding law of another country an inspector has been appointed to investigate the affairs of a corporation; and
- (b) the Minister is of the opinion that, in connection with that investigation, it is expedient that an investigation be made in Singapore,

the Minister may by notice declare that the inspector so appointed shall have the same powers and duties in Singapore in relation to the investigation as if the corporation were a declared company and the inspector had been appointed under section 231 and thereupon the inspector shall have those powers and duties. [210

PART X

WINDING UP

Division 1 — Preliminary

247. The winding up of a company may be either — Modes of winding up. Aust. s. 216 (1).
 (a) by the Court; or
 (b) voluntary. [211]

248. Unless inconsistent with the context or subject matter, the provisions of this Act with respect to winding up shall apply to the winding up of a company in either of those modes. Application of this Division. Aust. s. 216 (2). [212]

249. The provisions of this Part relating to the remedies against the property of a company, the priorities of debts and the effect of an arrangement with creditors shall bind the Government. Government bound by certain provisions. Aust. s. 217. [213]

250.—(1) On a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding up and for the adjustments of the rights of the contributories among themselves, subject to subsection (2) and the following qualifications: Liability as contributories of present and past members. U.K. s. 212. Aust. s. 218.

- (a) a past member shall not be liable to contribute if he has ceased to be a member for one year or more before the commencement of the winding up;
- (b) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;
- (c) a past member shall not be liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;
- (d) in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member;

- (e) in the case of a company limited by guarantee, no contribution shall, subject to subsection (4), be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;
- (f) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted or whereby the funds of the company are alone made liable in respect of the policy or contract;
- (g) a sum due to any member in his character of a member by way of dividends, profits or otherwise shall not be a debt of the company payable to that member in a case of competition between himself and any other creditor not a member, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

Unlimited
liability of
directors.

(2) In the winding up of a limited company any director, whether past or present, whose liability is unlimited shall in addition to his liability, if any, to contribute as an ordinary member be liable to make a further contribution as if he were, at the commencement of the winding up, a member of an unlimited company.

- (3) Notwithstanding anything in subsection (2) —
- (a) a past director shall not be liable to make a further contribution if he has ceased to hold office for a year or more before the commencement of the winding up;
 - (b) a past director shall not be liable to make a further contribution in respect of any debt or liability of the company contracted after he ceased to hold office; and
 - (c) subject to the articles of the company, a director shall not be liable to make a further contribution unless the Court considers it necessary to require that contribution in order to satisfy the debts and liabilities of the company and the costs, charges and expenses of the winding up.

251. The liability of a contributory shall create a debt accruing due from him at the time when his liability commenced but payable at the times when calls are made for enforcing the liability. [215

Nature of liability of contributory. U.K. s. 214. Aust. s. 219.

252.—(1) If a contributory dies, either before or after he has been placed on the list of contributories, his personal representatives shall be liable in due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly, and if they make default in paying any money ordered to be paid by them proceedings may be taken for administering the estate of the deceased contributory and for compelling payment thereof of the money due.

Contributories in case of death of member. U.K. s. 215. Aust. s. 220.

(2) If a contributory becomes bankrupt or assigns his estate for the benefit of his creditors, either before or after he has been placed on the list of contributories —

Contributories in case of bankruptcy of member. U.K. s. 216.

- (a) his trustee shall represent him for all the purposes of the winding up and shall be a contributory accordingly; and
- (b) there may be proved against his estate the estimated value of his liability to future calls as well as calls already made. [216

Division 2 — Winding up by the Court

Subdivision (1) — General

253.—(1) A company, whether or not it is being wound up voluntarily, may be wound up under an order of the Court on the petition —

Application for winding up. Aust. s. 221. 49/73 15/84.

- (a) of the company;
- (b) of any creditor, including a contingent or prospective creditor, of the company;
- (c) of a contributory or any person who is the personal representative of a deceased contributory or the Official Assignee of the estate of a bankrupt contributory;
- (d) of the liquidator;
- (e) of the Minister pursuant to section 241 or on the ground specified in section 254 (1) (d) or (l);

- (f) in the case of a company which is carrying on or has carried on banking business, of the Minister charged with the responsibility for finance; or
- (g) of the Minister on the ground specified in section 254 (1) (m),

or of any two or more of those parties.

(2) Notwithstanding anything in subsection (1) —

(a) a person referred to in subsection (1) (c) may not present a petition on any of the grounds specified in section 254 (1) (a), (b), (c), (e) or (i), unless —

(i) the number of members of the company, not being a company the whole of the issued shares of which are held by a holding company, is reduced below two; or

(ii) the shares in respect of which the contributory was a contributory or some of them were originally allotted to the contributory, or have been held by him and registered in his name for at least 6 months during the 18 months before the presentation of the petition or have devolved on him through the death or bankruptcy of a former holder;

(b) a petition shall not, if the ground of the petition is default in lodging the statutory report or in holding the statutory meeting, be presented by any person except a contributory or the Minister nor before the expiration of 14 days after the last day on which the meeting ought to have been held;

(c) the Court shall not hear the petition if presented by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and a *prima facie* case for winding up has been established to the satisfaction of the Court; and

(d) the Court shall not, where a company is being wound up voluntarily, make a winding up order unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories.

- 254.**—(1) The Court may order the winding up if —
- (a) the company has by special resolution resolved that it be wound up by the Court;
 - (b) default is made by the company in lodging the statutory report or in holding the statutory meeting;
 - (c) the company does not commence business within a year from its incorporation or suspends its business for a whole year;
 - (d) the number of members is reduced, in the case of a company other than a company the whole of the issued shares in which are held by a holding company, below two;
 - (e) the company is unable to pay its debts;
 - (f) the directors have acted in the affairs of the company in their own interests rather than in the interests of the members as a whole, or in any other manner whatever which appears to be unfair or unjust to other members;
 - (g) an inspector appointed under Part IX has reported that he is of opinion —
 - (i) that the company cannot pay its debts and should be wound up; or
 - (ii) that it is in the interests of the public or of the shareholders or of the creditors that the company should be wound up;
 - (h) when the period, if any, fixed for the duration of the company by the memorandum or articles expires or the event, if any, happens on the occurrence of which the memorandum or articles provide that the company is to be dissolved;
 - (i) the Court is of opinion that it is just and equitable that the company be wound up;
 - (j) the company has held a licence under any written law relating to banking, and that licence has been revoked or has expired and has not been renewed;
 - (k) the company has carried on banking business in Singapore in contravention of the provisions of any written law relating to banking;

Circumstances in which company may be wound up by Court.
 U.K. ss. 222, 223.
 Aust. s. 222.
 49/73
 15/84.

- (l) the company has carried on multi-level marketing or pyramid selling in contravention of any written law that prohibits multi-level marketing or pyramid selling; or
- (m) the company is being used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore or against national security or interest.

Definition of
inability to
pay debts.

(2) A company shall be deemed to be unable to pay its debts if —

- (a) a creditor by assignment or otherwise to whom the company is indebted in a sum exceeding \$500 then due has served on the company by leaving at the registered office a demand under his hand or under the hand of his agent thereunto lawfully authorised requiring the company to pay the sum so due, and the company has for 3 weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor;
- (b) execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
- (c) it is proved to the satisfaction of the Court that the company is unable to pay its debts; and in determining whether a company is unable to pay its debts the Court shall take into account the contingent and prospective liabilities of the company. [218]

Commence-
ment of
winding up.
U.K. s. 229.
Aust. s. 223.

255.—(1) Where before the presentation of the petition a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and, unless the Court on proof of fraud or mistake thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) In any other case the winding up shall be deemed to have commenced at the time of the presentation of the petition for the winding up. [219]

256.—(1) The persons, other than the company itself or the liquidator thereof, on whose petition any winding up order is made, shall at their own cost prosecute all proceedings in the winding up until a liquidator has been appointed under this Part.

Payment of preliminary costs, etc.
Aust. s. 224.

(2) The liquidator shall, unless the Court orders otherwise, reimburse the petitioner out of the assets of the company the taxed costs incurred by the petitioner in any such proceedings.

(3) Where the company has no assets or has insufficient assets, and in the opinion of the Minister any fraud has been committed by any person in the promotion or formation of the company or by any officer of the company in relation to the company since the formation thereof, the taxed costs or so much of them as is not so reimbursed may, with the approval in writing of the Minister, to an extent specified by the Minister but not in any case exceeding \$750, be reimbursed to the petitioner out of moneys provided by Parliament for the purpose.

(4) Where any winding up order is made upon the petition of the company or the liquidator thereof, the costs incurred shall, subject to any order of the Court, be paid out of assets of the company in like manner as if they were the costs of any other petitioner.

As to costs when order made on petition of company or liquidator.

[220

257.—(1) On hearing a winding up petition, the Court may dismiss it with or without costs or adjourn the hearing conditionally or unconditionally or make any interim or other order that it thinks fit, but the Court shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets or that the company has no assets or in the case of a petition by a contributory that there will be no assets available for distribution amongst the contributories.

Powers of Court on hearing petition.
U.K. s. 225.
Aust. s. 225.

(2) The Court may on the petition coming on for hearing or at any time on the application of the petitioner, the company, or any person who has given notice that he intends to appear on the hearing of the petition —

(a) direct that any notices be given or any steps taken before or after the hearing of the petition;

- (b) dispense with any notices being given or steps being taken which are required by this Act, or by the rules made thereunder, or by any prior order of the Court;
- (c) direct that oral evidence be taken on the petition or any matter relating thereto;
- (d) direct a speedy hearing or trial of the petition or any issue or matter;
- (e) allow the petition to be amended or withdrawn; and
- (f) give such directions as to the proceedings as the Court thinks fit.

(3) Where the petition is presented on the ground of default in lodging the statutory report or in holding the statutory meeting, the Court may, instead of making a winding up order, direct that the statutory report shall be lodged or that a meeting shall be held and may order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default. [221

Power to stay or restrain proceedings against company.
U.K. s. 226.
Aust. s. 226.

258. At any time after the presentation of a winding up petition and before a winding up order has been made, the company or any creditor or contributory may, where any action or proceeding against the company is pending, apply to the Court to stay or restrain further proceedings in the action or proceeding, and the Court may stay or restrain the proceedings accordingly on such terms as it thinks fit.

[222

Avoidance of dispositions of property, etc.
U.K. s. 227.
Aust. s. 227.

259. Any disposition of the property of the company, including things in action, and any transfer of shares or alteration in the status of the members of the company made after the commencement of the winding up by the Court shall unless the Court otherwise orders be void.

[223

Avoidance of certain attachments, etc.
U.K. s. 228.
Aust. s. 228.

260. Any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding up by the Court shall be void.

[224

Petition to be *lis pendens*.
Aust. s. 229.

261. Any petition for winding up a company shall constitute a *lis pendens* within the meaning of any law

relating to the effect of a *lis pendens* upon purchasers or mortgagees. [225

262.—(1) Within 7 days after the making of a winding up order, the petitioner shall lodge with the Registrar notice of —

- (a) the order and its date; and
- (b) the name and address of the liquidator.

Copy of order to be lodged, etc. U.K. ss. 230–232. Aust. s. 230.

(2) On the passing and entering of the winding up order, the petitioner shall within 7 days —

- (a) lodge an office copy of the order with the Registrar and with the Official Receiver;
- (b) cause a copy to be served upon the secretary of the company or upon such other person or in such manner as the Court directs; and
- (c) deliver a copy to the liquidator with a statement that the requirements of this subsection have been complied with.

(3) When a winding up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except —

Actions stayed on winding up order.

- (a) by leave of the Court; and
- (b) in accordance with such terms as the Court imposes.

(4) An order for winding up a company shall operate in favour of all the creditors and contributories of the company as if made on the joint petition of a creditor and of a contributory.

Effect of order.

(5) If default is made in complying with subsection (1) or (2), the petitioner shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty. [226

15/84.

Subdivision (2) — Liquidators

263. The following provisions with respect to liquidators shall have effect on a winding up order being made:

Appointment, style, etc., of liquidators.

- (a) if an approved liquidator, other than the Official Receiver, is not appointed to be the liquidator of the company, the Official Receiver shall by

- virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such;
- (b) if there is no liquidator appointed, the Official Receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the Court for appointing a liquidator in the place of the Official Receiver;
 - (c) the Court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matter aforesaid, the Court shall decide the difference and make such order thereon as the Court may think fit;
 - (d) in a case where a liquidator is not appointed by the Court, the Official Receiver shall be the liquidator of the company;
 - (e) the Official Receiver shall by virtue of his office be the liquidator during any vacancy;
 - (f) any vacancy in the office of a liquidator appointed by the Court may be filled by the Court;
 - (g) a liquidator shall be described, where a person other than the Official Receiver is liquidator, by the style of "the liquidator", and, where the Official Receiver is liquidator, by the style of "the Official Receiver and liquidator", of the particular company in respect of which he is appointed, and not by his individual name.

[227

Provisions
where person
other than
Official
Receiver is
appointed
liquidator.

264. Where in the winding up of a company by the Court, a person other than the Official Receiver, is appointed liquidator, that person —

- (a) shall not be capable of acting as liquidator until he has notified his appointment to the Registrar and given security in the prescribed manner to the satisfaction of the Official Receiver; and

(b) shall give the Official Receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be required for enabling that officer to perform his duties under this Act. [228]

265.—(1) Where in the winding up of a company by the Court, a person, other than the Official Receiver, is the liquidator the Official Receiver shall take cognizance of his conduct and if the liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by any written law or otherwise with respect to the performance of his duties, or if any complaint is made to the Official Receiver by any creditor or contributory in regard thereto, the Official Receiver shall inquire into the matter, and take such action thereon as he may think expedient.

Control of
unofficial
liquidators by
Official
Receiver.

(2) The Official Receiver may at any time require any such liquidator of a company which is being wound up by the Court to answer any inquiry in relation to any winding up in which he is engaged, and may, if the Official Receiver thinks fit, apply to the Court to examine him or any other person on oath concerning the winding up.

(3) The Official Receiver may also direct a local investigation to be made of the books and vouchers of such liquidator. [229]

266. The Minister shall take cognizance of the conduct of the Official Receiver and of all Assistant Official Receivers who are concerned in the liquidation of companies, and if any such person does not faithfully perform his duties and duly observe all the requirements imposed on him by any written law or otherwise with respect to the performance of his duties, or if any complaint is made to the Minister by any creditor or contributory in regard thereto, the Minister shall inquire into the matter, and take such action thereon as he may think expedient, and may direct a local investigation to be made of the books and vouchers of such person. [230]

Control of
Official
Receiver by
Minister.

267. The Court may appoint the Official Receiver or an approved liquidator provisionally at any time after the presentation of a winding up petition and before the making of a winding up order and the provisional liquidator shall

Provisional
liquidator.
Aust. s. 231
(2).

have and may exercise all the functions and powers of a liquidator, subject to such limitations and restrictions as may be prescribed by the rules or as the Court may specify in the order appointing him. [231

General provisions as to liquidators.
U.K. s. 242.
Aust. s. 232.

268.—(1) A liquidator appointed by the Court may resign or on cause shown be removed by the Court.

(2) A provisional liquidator, other than the Official Receiver, shall be entitled to receive such salary or remuneration by way of percentage or otherwise as is determined by the Court.

(3) A liquidator, other than the Official Receiver, shall be entitled to receive such salary or remuneration by way of percentage or otherwise as is determined —

(a) by agreement between the liquidator and the committee of inspection, if any;

(b) failing such agreement, or where there is no committee of inspection by a resolution passed at a meeting of creditors by a majority of not less than 75% in value and 50% in number of the creditors present in person or by proxy and voting at the meeting and whose debts have been admitted for the purpose of voting, which meeting shall be convened by the liquidator by a notice to each creditor to which notice shall be attached a statement of all receipts and expenditure by the liquidator and the amount of remuneration sought by him; or

(c) failing a determination in a manner referred to in paragraph (a) or (b), by the Court.

(4) Where the salary or remuneration of a liquidator is determined in the manner specified in subsection (3) (a), the Court may, on the application of a member or members whose shareholding or shareholdings represents or represent in the aggregate not less than 10% of the issued capital of the company, confirm or vary the determination.

(5) Where the salary or remuneration of a liquidator is determined in the manner specified in subsection (3) (b), the Court may, on the application of the liquidator or a member or members referred to in subsection (4), confirm or vary the determination.

(6) Subject to any order of the Court, the Official Receiver when acting as a liquidator or provisional liquidator of a company shall be entitled to receive such salary or remuneration by way of percentage or otherwise as is prescribed.

(7) If more than one liquidator is appointed by the Court, the Court shall declare whether anything by this Act required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(8) Subject to this Act, the acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification. [232

269.—(1) Where a winding up order has been made or a provisional liquidator has been appointed, the liquidator or provisional liquidator shall take into his custody or under his control all the property and things in action to which the company is or appears to be entitled.

Custody and vesting of company's property.
U.K. ss. 243, 244.
Aust. s. 233.

(2) The Court may, on the application of the liquidator, by order direct that all or any part of the property of whatever description belonging to the company or held by trustees on its behalf shall vest in the liquidator and thereupon the property to which the order relates shall vest accordingly and the liquidator may, after giving such indemnity, if any, as the Court directs, bring or defend any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

(3) Where an order is made under this section, every liquidator of a company in relation to which the order is made shall lodge within 7 days of the making of the order —

- (a) an office copy of the order with the Registrar; and
- (b) where the order relates to land, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land,

and every liquidator who makes default in complying with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty.

(4) No vesting order referred to in this section shall have any effect or operation in transferring or otherwise vesting land until an appropriate entry or memorandum thereof is made by or with the appropriate authority. [233

Statement of
company's
affairs to be
submitted to
Official
Receiver.
U.K. s. 235.
Aust. s. 234.

270.—(1) There shall be made out and verified in the prescribed form and manner and submitted to the Official Receiver or the liquidator, as the case requires, a statement as to the affairs of the company as at the date of the winding up order showing —

- (a) the particulars of its assets, debts and liabilities;
- (b) the names and addresses of its creditors;
- (c) the securities held by them respectively;
- (d) the dates when the securities were respectively given; and
- (e) such further information as is prescribed or as the Official Receiver or the liquidator requires.

(2) The statement shall be submitted by one or more of the persons who are, at the date of the winding up order, directors, and by the secretary of the company, or by such of the persons hereinafter mentioned as the Official Receiver or the liquidator, subject to the direction of the Court, requires, that is to say, persons —

- (a) who are or have been officers of the company;
- (b) who have taken part in the formation of the company at any time within one year before the date of the winding up order; or
- (c) who are or have been within that period officers of or in the employment of a corporation which is, or within that period was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within 14 days after the date of the winding up order or within such extended time as the Official Receiver or the liquidator or the Court for special reasons specifies, and the Official Receiver or the liquidator shall within 7 days after its receipt cause a copy of the statement to be filed with the Court and lodged with the Registrar and, where the Official Receiver is not the liquidator, shall cause a copy to be lodged with the Official Receiver.

(4) Any person making or concurring in making the statement required by this section may, subject to the rules, be allowed, and be paid, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement as the Official Receiver or the liquidator considers reasonable subject to an appeal to the Court.

(5) Every person who, without reasonable excuse, makes default in complying with the requirements of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both and also to a default penalty. 15/84.

[234

271.—(1) The liquidator shall as soon as practicable after receipt of the statement of affairs submit a preliminary report to the Court —

Report by liquidator.
U.K. s. 236.
Aust. s. 235.

- (a) as to the amount of capital issued, subscribed and paid up and the estimated amount of assets and liabilities;
- (b) if the company has failed, as to the causes of the failure; and
- (c) whether, in his opinion, further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company or the conduct of the business thereof.

(2) The liquidator may also, if he thinks fit, make further reports stating the manner in which the company was formed and whether in his opinion any fraud has been committed or any material fact has been concealed by any person in its promotion or formation or by any officer in relation to the company since its formation, and whether any officer of the company has contravened or failed to comply with any of the provisions of this Act, and specifying any other matter which in his opinion it is desirable to bring to the notice of the Court. [235

272.—(1) The liquidator may with the authority either of the Court or of the committee of inspection —

Powers of liquidator.
U.K. s. 245.
Aust. s. 236.

- (a) carry on the business of the company so far as is necessary for the beneficial winding up thereof, but the authority shall not be necessary to so

- carry on the business during the 4 weeks next after the date of the winding up order;
- (b) subject to section 328 pay any class of creditors in full;
 - (c) make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;
 - (d) compromise any calls and liabilities to calls, debts and liabilities capable of resulting in debts and any claims present or future, certain or contingent, ascertained or sounding only in damages subsisting, or supposed to subsist, between the company and a contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as are agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof; and
 - (e) appoint a solicitor to assist him in his duties.
- (2) The liquidator may —
- (a) bring or defend any action or other legal proceeding in the name and on behalf of the company;
 - (b) compromise any debt due to the company, other than calls and liabilities for calls and other than a debt where the amount claimed by the company to be due to it exceeds \$1,500;
 - (c) sell the immovable and movable property and things in action of the company by public auction, public tender or private contract with power to transfer the whole thereof to any person or company or to sell the same in parcels;
 - (d) do all acts and execute in the name and on behalf of the company all deeds, receipts and other documents and for that purpose use when necessary the company's seal;

- (e) prove, rank and claim in the bankruptcy of any contributory or debtor for any balance against his estate, and receive dividends in the bankruptcy in respect of that balance as a separate debt due from the bankrupt, and rateably with the other separate creditors;
- (f) draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business;
- (g) raise on the security of the assets of the company any money required;
- (h) take out letters of administration of the estate of any deceased contributory or debtor, and do any other act necessary for obtaining payment of any money due from a contributory or debtor or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall for the purposes of enabling the liquidator to take out the letters of administration or recover the money be deemed due to the liquidator himself;
- (i) appoint an agent to do any business which the liquidator is unable to do himself; and
- (j) do all such other things as are necessary for winding up the affairs of the company and distributing its assets.

(3) The exercise by the liquidator of the powers conferred by this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers. [236

273.—(1) Subject to this Part, the liquidator shall in the administration of the assets of the company and in the distribution thereof among its creditors have regard to any directions given by resolution of the creditors or contributories at any general meeting or by the committee of inspection, and any directions so given by the creditors or

Exercise and control of liquidator's powers.
U.K. s. 246.
Aust. s. 237.

contributories shall, in case of conflict, override any directions given by the committee of inspection.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and he shall summon meetings at such times as the creditors or contributories by resolution direct or whenever requested in writing to do so by not less than 10% in value of the creditors or contributories.

(3) The liquidator may apply to the Court for directions in relation to any particular matter arising under the winding up.

(4) Subject to this Part, the liquidator shall use his own discretion in the management of the affairs and property of the company and the distribution of its assets. [237

Payment by
liquidator
into bank.
U.K. s. 248.
Aust. s. 238.

274.—(1) Every liquidator shall, in the manner and at the times prescribed by the rules, pay the money received by him into such bank account as is prescribed by those rules or as is specified by the Court.

(2) If any liquidator retains for more than 10 days a sum exceeding \$200, or such other amount as the Court in any particular case authorises him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall pay interest on the amount so retained in excess, computed from the expiration of the abovementioned 10 days, until he has complied with subsection (1) at the rate of 20% per annum, and shall be liable —

(a) to disallowance of all or such part of his remuneration as the Court thinks just;

(b) to be removed from his office by the Court; and

(c) to pay any expenses occasioned by reason of his default.

(3) Any liquidator who pays any sums received by him as liquidator into any bank or account other than the bank or account prescribed or specified under subsection (1) shall be guilty of an offence. [238

Release of
liquidators
and dissolution
of
company.
U.K. ss. 251,
274.
Aust. s. 239.

275. When the liquidator —

(a) has realised all the property of the company or so much thereof as can in his opinion be realised, without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors and adjusted the rights of the

- contributories among themselves and made a final return, if any, to the contributories; or
- (b) has resigned or has been removed from his office, he may apply to the Court —
- (i) for an order that he be released; or
- (ii) for an order that he be released and that the company be dissolved. [239

276.—(1) Where an order is made that the company be dissolved, the company shall from the date of the order be dissolved accordingly.

As to orders for release or dissolution.
Aust. s. 240.

(2) The Court —

- (a) may cause a report on the accounts of a liquidator, not being the Official Receiver, to be prepared by the Official Receiver or by some approved company auditor appointed by the Court;
- (b) on the liquidator complying with all the requirements of the Court, shall take into consideration the report and any objection which is urged by the Official Receiver, auditor or any creditor or contributory or other person interested against the release of the liquidator; and
- (c) shall either grant or withhold the release accordingly.

(3) Where the release of a liquidator is withheld, the Court may, on the application of any creditor or contributory or person interested, make such order as it thinks just charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

(4) An order of the Court releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(5) Where the liquidator has not previously resigned or been removed his release shall operate as a removal from office.

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(6) Where the Court has made —

- (a) an order that the liquidator be released; or
- (b) an order that the liquidator be released and that the company be dissolved,

an office copy of the order shall, within 14 days after the making thereof, be lodged by the liquidator with the Registrar and with the Official Receiver, and a liquidator who makes default in complying with the requirements of this subsection shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty. [240

Subdivision (3) — Committees of inspection

Meetings to determine whether committee of inspection to be appointed. U.K. ss. 252, 254. Aust. s. 241.

277.—(1) The liquidator may, and shall, if requested by any creditor or contributory, summon separate meetings of the creditors and contributories for the purpose of determining whether or not the creditors or contributories require the appointment of a committee of inspection to act with the liquidator, and if so who are to be members of the committee.

(2) If there is a difference between the determinations of the meetings of the creditors and contributories the Court shall decide the difference and make such order as it thinks fit. [241

Constitution and proceedings of committee of inspection. U.K. s. 253. Aust. s. 242.

278.—(1) The committee of inspection shall consist of creditors and contributories of the company or persons holding —

- (a) general powers of attorney from creditors or contributories; or
- (b) special authorities from creditors or contributories authorising the persons named therein to act on such a committee,

appointed by the meetings of creditors and contributories in such proportions as are agreed or, in case of difference, as are determined by the Court.

(2) The committee shall meet at such times and places as it may from time to time appoint, and the liquidator or any member of the committee may also call a meeting of the committee as he thinks necessary.

(3) The committee may act by a majority of its members present at a meeting, but shall not act unless a majority of the committee is present.

(4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt or assigns his estate for the benefit of his creditors or makes an arrangement with his creditors pursuant to any written law relating to bankruptcy or is absent from 5 consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of contributories, if he represents contributories, of which meeting 7 days' notice has been given stating the object of the meeting.

(7) A vacancy in the committee may be filled by the appointment by the committee of the same or another creditor or contributory or person holding a general power of attorney or special authority as specified in subsection (1).

(8) The liquidator may at any time of his own motion and shall within 7 days after the request in writing of a creditor or contributory summon a meeting of creditors or of contributories, as the case requires, to consider any appointment made pursuant to subsection (7), and the meeting may confirm the appointment or revoke the appointment and appoint another creditor or contributory or person holding a general power of attorney or special authority as specified in subsection (1), as the case requires, in his stead.

(9) The continuing members of the committee if not less than two may act notwithstanding any vacancy in the committee. [242

Subdivision (4) — General powers of Court

279.—(1) At any time after an order for winding up has been made, the Court may, on the application of the liquidator or of any creditor or contributory and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order staying

Power to stay winding up.
U.K. s. 256.
Aust. s. 243.

the proceedings either altogether or for a limited time on such terms and conditions as the Court thinks fit.

(2) On any such application the Court may, before making an order, require the liquidator to furnish a report with respect to any facts or matters which are in his opinion relevant.

(3) An office copy of every order made under this section shall be lodged by the company with the Registrar and with the Official Receiver within 14 days after the making of the order.

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(4) Any person who fails to comply with subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

[243]

Settlement of list of contributories and application of assets.

U.K. s. 257.
Aust. s. 244.

280.—(1) As soon as possible after making a winding up order, the Court shall settle a list of contributories and may rectify the register of members in all cases where rectification is required in pursuance of this Part and shall cause the assets of the company to be collected and applied in discharge of its liabilities.

(2) Notwithstanding subsection (1), where it appears to the Court that it will not be necessary to make calls on or adjust the rights of contributories, the Court may dispense with the settlement of a list of contributories.

(3) In settling the list of contributories, the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

(4) The list of contributories, when settled, shall be prima facie evidence of the liabilities of the persons named therein as contributories.

[244]

Payment of debts due by contributory, to company, and extent to which set-off allowed.

U.K. s. 259.
Aust. s. 245
(2).

281.—(1) The Court may make an order directing any contributory for the time being on the list of contributories to pay to the company, in the manner directed by the order, any money due from him or from the estate of the person whom he represents, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act, and may —

(a) in the case of an unlimited company, allow to the contributory by way of set-off any money due to

him or to the estate which he represents from the company on any independent dealing or contract but not any money due to him as a member of the company in respect of any dividend or profit; and

- (b) in the case of a limited company, make to any director whose liability is unlimited or to his estate the like allowance,

and in the case of any company whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

(2) The Court may either before or after it has ascertained the sufficiency of the assets of the company —

Power of Court to make calls.
U.K. s. 260.
Aust. s. 245 (3).

- (a) make calls on all or any of the contributories for the time being on the list of contributories, to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the company and the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves; and

(b) make an order for payment of any calls so made, and, in making a call, may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

(3) The Court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into some bank, named in such order, to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

Payment into bank of moneys due to company.
U.K. s. 261.
Aust. s. 245 (4).

(4) All moneys and securities paid or delivered into any bank pursuant to this Division shall be subject in all respects to orders of the Court.

(5) An order made by the Court under this section shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due, and all other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings.

Order on contributory conclusive evidence.
U.K. s. 262.
Aust. s. 245 (6).

Appointment
of special
manager.
U.K. s. 263.
Aust. s. 246.

282.—(1) The liquidator may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the Court which may appoint a special manager of the estate or business to act during such time as the Court directs with such powers, including any of the powers of a receiver or manager, as are entrusted to him by the Court.

(2) The special manager —

- (a) shall give such security and account in such manner as the Court directs;
- (b) shall receive such remuneration as is fixed by the Court; and
- (c) may at any time resign after giving not less than one month's notice in writing to the liquidator of his intention to resign, or on cause shown be removed by the Court. [246

Claims of cre-
ditors and
distribution
of assets.
U.K. ss. 264,
265, 267.
Aust. s. 247.

283.—(1) The Court may fix a date on or before which creditors are to prove their debts or claims or after which they will be excluded from the benefit of any distribution made before those debts are proved.

(2) The Court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto.

(3) The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the winding up in such order of priority as the Court thinks fit. [247

Inspection of
books by cre-
ditors and
contribu-
tories.
U.K. s. 266.
Aust. s. 248.

284. The Court may make such order for inspection of the books and papers of the company by creditors and contributories as the Court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise. [248

285.—(1) The Court may summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the Court considers capable of giving information concerning the promotion, formation, trade dealings, affairs or property of the company.

Power to summon persons connected with company.
U.K. s. 268.
Aust. s. 249.

(2) The Court may examine him on oath concerning the matters mentioned in subsection (1) either by word of mouth or on written interrogatories and may reduce his answers to writing and require him to sign them, and any writing so signed may be used in evidence in any legal proceedings against him.

(3) The Court may require him to produce any books and papers in his custody or power relating to the company, but where he claims any lien on books or papers the production shall be without prejudice to that lien, and the Court shall have jurisdiction to determine all questions relating to that lien.

(4) An examination under this section or section 286 may, if the Court so directs and subject to the rules, be held before any District Judge named for the purpose by the Court, and the powers of the Court under this section and section 286 may be exercised by that Judge.

(5) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, not having a lawful excuse, made known to the Court at the time of its sitting and allowed by it, the Court may cause him to be apprehended and brought before the Court for examination. [249

286.—(1) Where the liquidator has made a report under this Part stating that, in his opinion, a fraud has been committed or that any material fact has been concealed by any person in the promotion or formation of the company or by any officer in relation to the company since its formation or that any officer of the company has failed to act honestly or diligently or has been guilty of any impropriety or recklessness in relation to the affairs of the company, the Court may, after consideration of the report, direct that the person or officer, or any other person who was previously an officer of the company, including any banker, solicitor or

Power to order public examination of promoters, directors, etc.
U.K. s. 270.
Aust. s. 250.

auditor, or who is known or suspected to have in his possession any property of the company or is supposed to be indebted to the company or any person whom the Court considers capable of giving information concerning the promotion, formation, trade dealings, affairs or property of the company, shall attend before the Court on a day appointed and be publicly examined as to the promotion or formation or the conduct of the business of the company, or in the case of an officer or former officer as to his conduct and dealings as an officer thereof.

(2) The liquidator and any creditor or contributory may take part in the examination either personally or by a solicitor.

(3) The Court may put or allow to be put such questions to the person examined as the Court thinks fit.

(4) The person examined shall be examined on oath and shall answer all such questions as the Court puts or allows to be put to him.

(5) A person ordered to be examined under this section shall before his examination be furnished with a copy of the liquidator's report.

(6) Where a person directed to attend before the Court under subsection (1) applies to the Court to be exculpated from any charges made or suggested against him, the liquidator shall appear on the hearing of the application and call the attention of the Court to any matters which appear to him to be relevant and if the Court, after hearing any evidence given or witnesses called by the liquidator, grants the application the Court may allow the applicant such costs as the Court in its discretion thinks fit.

(7) Notes of the examination —

(a) shall be reduced to writing;

(b) shall be read over to or by and signed by the person examined;

(c) may thereafter be used in evidence in any legal proceedings against him; and

(d) shall be open to the inspection of any creditor or contributory at all reasonable times.

(8) The Court may if it thinks fit adjourn the examination from time to time.

287. The Court, at any time before or after making a winding up order, on proof of probable cause for believing that a contributory or a director or former director of the company is about to quit Singapore or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, may cause the contributory, director or former director to be arrested and his books and papers and movable personal property to be seized and him and them to be safely kept until such time as the Court orders. [251]

Power to arrest absconding contributory, director or former director.
U.K. s. 271.
Aust. s. 251.

288. Provision may be made by rules enabling or requiring all or any of the powers and duties conferred and imposed on the Court by this Part in respect of —

Delegation to liquidator of certain powers of Court.
U.K. s. 273.
Aust. s. 252.

- (a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;
- (b) the settling of lists of contributories, the rectifying of the register of members where required, and the collecting and applying of the assets;
- (c) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;
- (d) the making of calls and the adjusting of the rights of contributories; and
- (e) the fixing of a time within which debts and claims must be proved,

to be exercised or performed by the liquidator as an officer of the Court and subject to the control of the Court, but the liquidator shall not, without the special leave of the Court, rectify the register of members and shall not make any call without either the special leave of the Court or the sanction of the committee of inspection. [252]

289.—(1) Any powers by this Act conferred on the Court shall be in addition to, and not in derogation of, any existing powers of instituting proceedings against any contributory or debtor of the company or the estate of any contributory or debtor for the recovery of any call or other sums.

Powers of Court cumulative.
U.K. ss. 272, 277.
Aust. s. 253.

(2) Subject to the rules, an appeal from any order or decision made or given in the winding up of a company shall lie in the same manner and subject to the same conditions as

an appeal from any order or decision of the Court in cases within its ordinary jurisdiction. [253]

Division 3 — Voluntary winding up

Subdivision (1) — Introductory

Circumstances in which company may be wound up voluntarily.
U.K. ss. 278, 279.
Aust. s. 254.

290.—(1) A company may be wound up voluntarily —

(a) when the period, if any, fixed for the duration of the company by the memorandum or articles expires or the event, if any, happens, on the occurrence of which the memorandum or articles provide that the company is to be dissolved and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily; or

(b) if the company so resolves by special resolution.

(2) A company shall —

(a) within 7 days after the passing of a resolution for voluntary winding up, lodge a printed copy of the resolution with the Registrar; and

(b) within 10 days after the passing of the resolution, give notice of the resolution in one or more newspapers circulating in Singapore.

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(3) If the company fails to comply with subsection (2), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty. [254]

Provisional liquidators.

291.—(1) Where the directors of a company have made a statutory declaration in the prescribed form which has been lodged with the Registrar and with the Official Receiver —

(a) that the company cannot by reason of its liabilities continue its business; and

(b) that meetings of the company and of its creditors have been summoned for a date within one month of the date of the declaration,

the directors shall forthwith appoint an approved liquidator to be the provisional liquidator.

(2) A provisional liquidator shall have and may exercise all the functions and powers of a liquidator in a creditors'

winding up subject to such limitations and restrictions as may be prescribed by the rules.

(3) The appointment of a provisional liquidator under this section shall continue for one month from the date of his appointment or for such further period as the Official Receiver may allow in any particular case or until the appointment of a liquidator, whichever first occurs.

(4) Notice of the appointment of a provisional liquidator under this section together with a copy of the declaration lodged with the Registrar shall be advertised within 14 days of the appointment of the provisional liquidator in at least 4 local daily newspapers, one each published in the English, Malay, Chinese and Tamil languages.

(5) A provisional liquidator shall be entitled to receive such salary or remuneration by way of percentage or otherwise as is prescribed.

(6) A voluntary winding up shall commence —

(a) where a provisional liquidator has been appointed before the resolution for voluntary winding up was passed, at the time when the declaration referred to in subsection (1) was lodged with the Registrar; and

(b) in any other case, at the time of the passing of the resolution for voluntary winding up. [255

Commence-
ment of
voluntary
winding up.

292.—(1) The company shall from the commencement of the winding up cease to carry on its business, except so far as is in the opinion of the liquidator required for the beneficial winding up thereof, but the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

Effect of
voluntary
winding up.
U.K. ss. 281,
282.
Aust. s. 256.

(2) Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members made after the commencement of the winding up, shall be void. [256

293.—(1) Where it is proposed to wind up a company voluntarily, the directors of the company, or in the case of a company having more than two directors, the majority of the directors shall, before the date on which the notices of the meeting at which the resolution for the winding up of the

Declaration
of solvency.
U.K. s. 283.
Aust. s. 257.

company is to be proposed are sent out, make a written declaration to the effect that they have made an inquiry into the affairs of the company, and that, at a meeting of directors, have formed the opinion that the company will be able to pay its debts in full within a period not exceeding 12 months after the commencement of the winding up.

(2) There shall be attached to the declaration a statement of affairs of the company showing, in the prescribed form —

- (a) the assets of the company and the total amount expected to be realised therefrom;
- (b) the liabilities of the company; and
- (c) the estimated expenses of winding up,

made up to the latest practicable date before the making of the declaration.

(3) A declaration so made shall have no effect for the purposes of this Act unless it is —

- (a) made at the meeting of directors referred to in subsection (1);
- (b) made within 5 weeks immediately preceding the passing of the resolution for voluntary winding up; and
- (c) lodged with the Registrar before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out.

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(4) A director, who makes a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period stated in the declaration, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

(5) If the company is wound up in pursuance of a resolution for voluntary winding up passed within a period of 5 weeks after the making of the declaration, but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed until the contrary is shown that the director did not have reasonable grounds for his opinion.

Subdivision (2) — Provisions applicable only to members' voluntary winding up

294.—(1) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company and may fix the remuneration to be paid to him or them.

Liquidators.
U.K. ss. 285,
286.
Aust. s. 258.

(2) On the appointment of a liquidator, all the powers of the directors shall cease except so far as the liquidator or the company in general meeting with the consent of the liquidator approves the continuance thereof.

(3) The company may in general meeting convened by any contributory by special resolution of which special notice has been given to the creditors and the liquidators remove any liquidator but no such resolution shall be effective to remove a liquidator if the Court, on the application of the liquidator or a creditor, has ordered that the liquidator be not removed.

(4) If a vacancy occurs by death, resignation, removal or otherwise in the office of a liquidator, the company in general meeting may fill the vacancy by the appointment of a liquidator and fix the remuneration to be paid to him, and for that purpose a general meeting may be convened by any contributory, or if there were more liquidators than one by the continuing liquidators.

(5) The meeting shall be held in the manner provided by this Act or by the articles or in such manner as is, on application by any contributory or by the continuing liquidators, determined by the Court. [258

295.—(1) If the liquidator is at any time of the opinion that the company will not be able to pay or provide for the payment of its debts in full within the period stated in the declaration made under section 293, he shall forthwith summon a meeting of the creditors and lay before the meeting a statement of the assets and liabilities of the company and the notice summoning the meeting shall draw the attention of the creditors to the right conferred upon them by subsection (2).

Duty of liquidator to call creditors' meeting in case of insolvency.
U.K. ss. 288,
291.
Aust. s. 259.

(2) The creditors may, at the meeting summoned under subsection (1), appoint some other person to be liquidator for the purpose of winding up the affairs and distributing the

assets of the company instead of the liquidator appointed by the company.

(3) If the creditors appoint some other person under subsection (2), the winding up shall thereafter proceed as if the winding up were a creditors' voluntary winding up.

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(4) Within 7 days after a meeting has been held pursuant to subsection (1), the liquidator or if some other person has been appointed by the creditors to be the liquidator, the person so appointed shall lodge with the Registrar and with the Official Receiver a notice in the prescribed form and if default is made in complying with this subsection the liquidator or the person so appointed, as the case requires, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$800 and also to a default penalty.

Alternative provisions as to annual meetings in case of insolvency.

(5) Where the liquidator has convened a meeting under subsection (1) and the creditors do not appoint a liquidator instead of the liquidator appointed by the company, the winding up shall thereafter proceed as if the winding up were a creditors' voluntary winding up; but the liquidator shall not be required to summon an annual meeting of creditors at the end of the first year from the commencement of the winding up if the meeting held under subsection (1) was held less than 3 months before the end of that year. [259

Subdivision (3) — Provisions applicable only to creditors' voluntary winding up

Meeting of creditors.
U.K. s. 293.
Aust. s. 260.

296.—(1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company.

(2) The company shall convene the meeting at a time and place convenient to the majority in value of the creditors and shall —

(a) give to the creditors at least 7 clear days' notice by post of the meeting; and

- (b) send to each creditor with the notice, a statement showing the names of all creditors and the amounts of their claims.
- (3) The company shall cause notice of the meeting of the creditors to be advertised at least 7 days before the date of the meeting in a newspaper circulating in Singapore.
- (4) The directors of the company shall —
- (a) cause a full statement of the company's affairs showing in respect of assets the method and manner in which the valuation of the assets was arrived at, together with a list of the creditors and the estimated amount of their claims to be laid before the meeting of creditors; and
- (b) appoint one of their number to attend the meeting.
- (5) The director so appointed and the secretary shall attend the meeting and disclose to the meeting the company's affairs and the circumstances leading up to the proposed winding up.
- (6) The creditors may appoint one of their number or the director appointed under subsection (4) (b) to preside at the meeting.
- (7) The chairman shall at the meeting determine whether the meeting has been held at a time and place convenient to the majority in value of the creditors and his decision shall be final.
- (8) If the chairman decides that the meeting has not been held at a time and place convenient to that majority, the meeting shall lapse and a further meeting shall be summoned by the company as soon as is practicable.
- (9) If the meeting of the company is adjourned and the resolution for winding up is passed at an adjourned meeting, any resolution passed at the meeting of the creditors shall have effect as if it had been passed immediately after the passing of the resolution for winding up.
- (10) If default is made in complying with this section, the company and any officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000. 15/84.

Liquidator.
U.K. ss. 294,
296, 297.
Aust. s. 261.

297.—(1) The company shall, and the creditors may at their respective meetings, nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person nominated by the company shall be liquidator.

(2) Notwithstanding subsection (1), where different persons are nominated any director, member or creditor may, within 7 days after the date on which the nomination was made by the creditors, apply to the Court for an order directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors.

(3) The committee of inspection, or if there is no such committee the creditors, may fix the remuneration to be paid to the liquidator.

(4) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the committee of inspection, or, if there is no such committee, the creditors, approve the continuance thereof.

(5) If a liquidator, other than a liquidator appointed by or by the direction of the Court, dies, resigns or otherwise vacates the office, the creditors may fill the vacancy and for the purpose of so doing a meeting of the creditors may be summoned by any two of their number. [261

Committee of
inspection.
U.K. s. 295.
Aust. s. 262.

298.—(1) The creditors at the meeting summoned pursuant to section 295 or 296 or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than 5 persons, whether creditors or not and, if such a committee is appointed, the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons but not more than 5 as it thinks fit to act as members of the committee.

(2) Notwithstanding subsection (1), the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection and, if the creditors so resolve, the

persons mentioned in the resolution shall not, unless the Court otherwise directs, be qualified to act as members of the committee, and on any application to the Court under this subsection the Court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(3) Subject to this section and the rules made under this Act, the provisions of Subdivision (3) of Division 2 relating to the proceedings of and vacancies in committees of inspection shall apply with respect to a committee of inspection appointed under this section. [262

299.—(1) Any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of a creditors' voluntary winding up shall be void. Property and proceedings. Aust. s. 263.

(2) After the commencement of the winding up no action or proceeding shall be proceeded with or commenced against the company except by leave of the Court and subject to such terms as the Court imposes. [263

Subdivision (4) — Provisions applicable to every voluntary winding up

300. Subject to the provisions of this Act as to preferential payments, the property of a company shall, on its winding up, be applied *pari passu* in satisfaction of its liabilities, and, subject to that application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company. Distribution of property of company. U.K. s. 302. Aust. s. 264. [264

301. If from any cause there is no liquidator acting, the Court may appoint a liquidator. Appointment of liquidator. U.K. s. 304. Aust. s. 265. [265

302. The Court may, on cause shown, remove a liquidator and appoint another liquidator. Removal of liquidator. Aust. s. 266. [266

303. Any member or creditor or the liquidator may at any time before the dissolution of the company apply to the Court to review the amount of the remuneration of the liquidator, and the decision of the Court shall be final and conclusive. Review of liquidator's remuneration. Aust. s. 267. [267

Act of liquidator valid, etc.
Aust. s. 268.

304.—(1) The acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

(2) Any conveyance, assignment, transfer, mortgage, charge or other disposition of a company's property made by a liquidator shall, notwithstanding any defect or irregularity affecting the validity of the winding up or the appointment of the liquidator be valid in favour of any person taking such property bona fide and for value and without notice of such defect or irregularity.

(3) Every person making or permitting any disposition of property to any liquidator shall be protected and indemnified in so doing notwithstanding any defect or irregularity affecting the validity of the winding up or the appointment of the liquidator not then known to that person.

(4) For the purposes of this section, a disposition of property shall be taken as including a payment of money.
[268

Powers and duties of liquidator.
U.K. s. 303.
Aust. s. 269.

305.—(1) The liquidator may —

- (a) in the case of a members' voluntary winding up, with the approval of a special resolution of the company and, in the case of a creditors' voluntary winding up, with the approval of the Court or the committee of inspection, exercise any of the powers given by section 272 (1) (b), (c), (d) and (e) to a liquidator in a winding up by the Court;
- (b) exercise any of the other powers by this Act given to the liquidator in a winding up by the Court;
- (c) exercise the power of the Court under this Act of settling a list of contributories, and the list of contributories shall be prima facie evidence of the liability of the persons named therein to be contributories;
- (d) exercise the power of the Court of making calls; or
- (e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution in respect of any matter or for any other purpose he thinks fit.

(2) The liquidator shall pay the debts of the company and adjust the rights of the contributories among themselves.

(3) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as is determined at the time of their appointment, or in default of such determination by any number not less than two. [269

306.—(1) Where it is proposed that the whole or part of the business or property of a company (referred to in this section as the company) be transferred or sold to another corporation (referred to in this section as the corporation), the liquidator of the company may, with the sanction of a special resolution of the company conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transfer or sale shares, debentures, policies or other like interests in the corporation for distribution among the members of the company, or may enter into any other arrangement whereby the members of the company may, in lieu of receiving cash, shares, debentures, policies or other like interests or in addition thereto, participate in the profits of or receive any other benefit from the corporation and any such transfer, sale or arrangement shall be binding on the members of the company.

Power of liquidator to accept shares, etc., as consideration for sale of property of company.
U.K. ss. 287, 298.
Aust. s. 270.

(2) If any member of the company expresses his dissent therefrom in writing addressed to the liquidator and left at the registered office of the liquidator within 7 days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration in the manner provided by this section.

(3) If the liquidator elects to purchase the member's interest, the purchase money shall be paid before the company is dissolved and be raised by the liquidator in such manner as is determined by special resolution.

(4) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but if an order for winding up the company by the Court is made within a year after the passing of the resolution the resolution shall not be valid unless sanctioned by the Court.

Cap. 10. (5) For the purposes of an arbitration under this section, the Arbitration Act shall apply as if there were a submission for reference to two arbitrators, one to be appointed by each party; and the appointment of an arbitrator may be made under the hand of the liquidator, or if there is more than one liquidator then under the hands of any two or more of the liquidators; and the Court may give any directions necessary for the initiation and conduct of the arbitration and such direction shall be binding on the parties.

(6) In the case of a creditors' voluntary winding up, the powers of the liquidator under this section shall not be exercised except with the approval of the Court or the committee of inspection. [270]

Annual meeting of members and creditors.
U.K. ss. 289, 299.
Aust. s. 271.

307.—(1) If the winding up continues for more than one year, the liquidator shall summon a general meeting of the company in the case of a members' voluntary winding up, and of the company and the creditors in the case of a creditors' voluntary winding up, at the end of the first year from the commencement of the winding up and of each succeeding year or not more than 3 months thereafter, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) The liquidator shall cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company.

15/84. (3) Every liquidator who fails to comply with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty. [271]

Final meeting and dissolution.
U.K. ss. 290, 300.
Aust. s. 272.

308.—(1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company, or in the case of a creditors' voluntary winding up a meeting of the company and the creditors, for the purpose of laying before it the account and giving any explanation thereof.

15/84. (2) The meeting shall be called by advertisement published in at least 4 local daily newspapers, one each in

the English, Malay, Chinese and Tamil languages which advertisement shall specify the time, place and object of the meeting and shall be published at least one month before the meeting, except that when a declaration is made by the liquidator and filed with the Official Receiver that neither at the date of commencement of the winding up nor since that date has the company had trade creditors, the advertisement referred to in this subsection need only be published in a newspaper circulating generally throughout Singapore.

(3) The liquidator shall within 7 days after the meeting lodge with the Registrar and the Official Receiver a return of the holding of the meeting and of its date with a copy of the account attached to such return, and if the return or copy of the account is not so lodged the liquidator shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty. 15/84.

(4) The quorum at a meeting of the company shall be two and at a meeting of the company and the creditors shall be two members and two creditors and if a quorum is not present at the meeting, the liquidator shall in lieu of the return mentioned in subsection (3) lodge a return (with account attached) that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being lodged subsection (3) as to the lodging of the return shall be deemed to have been complied with.

(5) On the expiration of 3 months after the lodging of the return with the Registrar and with the Official Receiver, the company shall be dissolved.

(6) Notwithstanding subsection (5), the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(7) The person on whose application an order of the Court under this section is made shall, within 14 days after the making of the order, lodge with the Registrar and with the Official Receiver an office copy of the order, and if he fails to do so he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty. 15/84.

(8) If the liquidator fails to call a meeting as required by this section, he shall be guilty of an offence and shall be 15/84.

liable on conviction to a fine not exceeding \$2,000 and also to a default penalty. [272]

Arrangement
when binding
on creditors.
U.K. s. 306.
Aust. s. 273.

309.—(1) Any arrangement entered into between a company about to be or in the course of being wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by a special resolution, and on the creditors if acceded to by 75% in value and 50% in number of the creditors, every creditor for under \$50 being reckoned in value only.

(2) A creditor shall be accounted a creditor for value for such sum as upon an account fairly stated, after allowing the value of security or liens held by him and the amount of any debt or set-off owing by him to the debtor, appears to be the balance due to him.

(3) Any dispute with regard to the value of any such security or lien or the amount of such debt or set-off may be settled by the Court on the application of the company, the liquidator or the creditor.

(4) Any creditor or contributory may within 3 weeks from the completion of the arrangement appeal to the Court against it, and the Court may thereupon, as it thinks just, amend, vary or confirm the arrangement. [273]

Application
to Court to
have ques-
tions deter-
mined or
powers exer-
cised.
U.K. s. 307.
Aust. s. 274.

310.—(1) The liquidator or any contributory or creditor may apply to the Court —

- (a) to determine any question arising in the winding up of a company; or
- (b) to exercise all or any of the powers which the Court might exercise if the company were being wound up by the Court.

(2) The Court, if satisfied that the determination of the question or the exercise of power will be just and beneficial, may accede wholly or partially to any such application on such terms and conditions as it thinks fit or may make such other order on the application as it thinks just. [274]

Costs.
U.K. s. 309.
Aust. s. 275.

311. All proper costs, charges and expenses of and incidental to the winding up including the remuneration of the liquidator shall be payable out of the assets of the company in priority to all other claims. [275]

312. Where a petition has been presented to the Court to wind up a company on the ground that it is unable to pay its debts the company shall not, without the leave of the Court, resolve that it be wound up voluntarily. [276

Limitation on right to wind up voluntarily.
Aust. s. 276.

Division 4 — Provisions applicable to every mode of winding up

Subdivision (1) — General

313.—(1) Every liquidator shall keep proper books in which he shall cause to be made entries or minutes of proceedings at meetings and of such other matters as are prescribed, and any creditor or contributory may, subject to the control of the Court, personally or by his agent inspect them.

Books to be kept by liquidator.
U.K. s. 247.
Aust. s. 277.

(2) The Court shall take cognizance of the conduct of liquidators, and if a liquidator does not faithfully perform his duties and observe the prescribed requirements or the requirements of the Court or if any complaint is made to the Court by any creditor or contributory or by the Official Receiver in regard thereto, the Court shall inquire into the matter and take such action as it thinks fit.

Control of Court over liquidators.
U.K. s. 250.
Aust. s. 278.

(3) The Registrar or the Official Receiver may report to the Court any matter which in his opinion is a misfeasance, neglect or omission on the part of the liquidator and the Court may order the liquidator to make good any loss which the estate of the company has sustained thereby and make such other order as it thinks fit.

(4) The Court may at any time require any liquidator to answer any inquiry in relation to the winding up and may examine him or any other person on oath concerning the winding up and may direct an investigation to be made of the books and vouchers of the liquidator.

(5) The Court may require any contributory, trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer to the liquidator or provisional liquidator forthwith or within such time as the Court directs any money, property, books and papers in his hands to which the company is prima facie entitled. [277

Delivery of property to liquidator.
U.K. s. 258.
Aust. s. 245 (1).

314.—(1) Where a person other than the Official Receiver is the liquidator and there is no committee of inspection, the Official Receiver may, on the application of the liquidator, do any act or thing or give any direction or

Powers of Official Receiver where no committee of inspection.

permission which is by this Act authorised or required to be done or given by the committee.

(2) Where the Official Receiver is the liquidator and there is no committee of inspection, the Official Receiver may in his discretion do any act or thing which is by this Act required to be done by, or subject to any direction or permission given by, the committee. [278]

Appeal
against
decision of
liquidator.
Aust. s. 279.

315. Any person aggrieved by any act or decision of the liquidator may apply to the Court which may confirm, reverse or modify the act or decision complained of and make such order as it thinks just. [279]

Notice of
appointment
and address
of liquidator.
U.K. s. 305.
Aust. s. 280.

316.—(1) A liquidator shall, within 14 days after his appointment, lodge with the Registrar and with the Official Receiver notice in the prescribed form of his appointment and of the situation of his office and in the event of any change in the situation of his office shall within 14 days after the change lodge with the Registrar and with the Official Receiver notice in the prescribed form of the change.

(2) Service made by leaving any document at or sending it by post addressed to the address of the office of the liquidator given in any such notice lodged with the Registrar shall be deemed to be good service upon the liquidator and upon the company.

(3) A liquidator shall, within 14 days after his resignation or removal from office, lodge with the Registrar and with the Official Receiver notice thereof in the prescribed form.

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(4) If a liquidator fails to comply with this section, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty. [280]

Liquidator's
accounts.
U.K. s. 249.
Aust. s. 281.
15/84.

317.—(1) Every liquidator shall, within one month after the expiration of a period of 6 months from the date of his appointment and of every subsequent period of 6 months and in any case within one month after he ceases to act as liquidator and forthwith after obtaining an order of release, lodge with the Registrar and the Official Receiver in the prescribed form and verified by statutory declaration an account of his receipts and payments and a statement of the position in the winding up, and any liquidator who fails to

do so shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

(2) The Official Receiver may cause the account of any liquidation to be audited by an approved company auditor, and for the purpose of the audit the liquidator shall furnish the auditor with such vouchers and information as he requires, and the auditor may at any time require the production of and inspect any books or accounts kept by the liquidator.

(3) A copy of the account or, if audited, a copy of the audited account shall be kept by the liquidator and the copy shall be open to the inspection of any creditor or of any person interested at the office of the liquidator.

(4) The liquidator shall —

(a) give notice that the account has been made up to every creditor and contributory when next forwarding any report, notice of meeting, notice of call or dividend; and

(b) in such notice inform the creditors and contributories at what address and between what hours the account may be inspected.

(5) The costs of an audit under this section shall be fixed by the Official Receiver and shall be part of the expenses of winding up. [281

318.—(1) If any liquidator who has made any default in lodging or making any application, return, account or other document, or in giving any notice which he is by law required to lodge, make or give, fails to make good the default within 14 days after the service on him of a notice requiring him to do so, the Court may, on the application of any contributory or creditor of the company or the Official Receiver, make an order directing the liquidator to make good the default within such time as is specified in the order.

Liquidator to
make good
defaults.
U.K. s. 337.
Aust. s. 282.

(2) Any order made under subsection (1) may provide that all costs of and incidental to the application shall be borne by the liquidator.

(3) Nothing in subsection (1) shall prejudice the operation of any written law imposing penalties on a liquidator in respect of any such default. [282

Notification
that a com-
pany is in
liquidation.
U.K. s. 338.
Aust. s. 283.

319.—(1) Where a company is being wound up every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall have the words “in liquidation” added after the name of the company where it first appears therein.

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(2) If default is made in complying with this section, the company, and every officer of the company or liquidator and every receiver or manager who knowingly and wilfully authorises or permits the default, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$400. [283

Books of
company.
U.K. ss. 340,
341.
Aust. s. 284.

320.—(1) Where a company is being wound up, all books and papers of the company and of the liquidator that are relevant to the affairs of the company at or subsequent to the commencement of the winding up of the company shall, as between the contributories of the company, be prima facie evidence of the truth of all matters purporting to be therein recorded.

(2) When a company has been wound up the liquidator shall retain the books and papers referred to in subsection (1) for a period of 5 years from the date of dissolution of the company and at the expiration of that period may destroy them.

(3) Notwithstanding subsection (2), when a company has been wound up the books and papers referred to in subsection (1) may be destroyed within a period of 5 years after the dissolution of the company —

- (a) in the case of a winding up by the Court, in accordance with the directions of the Court;
- (b) in the case of a members' voluntary winding up, as the company by resolution directs; and
- (c) in the case of a creditors' voluntary winding up, as the committee of inspection, or, if there is no such committee, as the creditors of the company direct.

(4) No responsibility shall rest on the company or the liquidator by reason of any such book or paper not being forthcoming to any person claiming to be interested therein

if such book or paper has been destroyed in accordance with this section.

(5) Any person who fails to comply with subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000. [284]

321.—(1) Whenever the cash balance standing to the credit of any company in liquidation is in excess of the amount which, in the opinion of the committee of inspection, or, if there is no committee of inspection, of the liquidator, is required for the time being to answer demands in respect of the estate of the company, the liquidator, if so directed in writing by the committee of inspection, or, if there is no committee of inspection, the liquidator himself, may, unless the Court on application by any creditor thinks fit to direct otherwise and so orders, invest the sum or any part thereof in securities issued by the Government of Singapore or of Malaysia or place it on deposit at interest with any bank, and any interest received in respect thereof shall form part of the assets of the company.

Investment of surplus funds on general account.
U.K. s. 361.
Aust. s. 285.

(2) Whenever any part of the money so invested is, in the opinion of the committee of inspection, or, if there is no committee of inspection, of the liquidator, required to answer any demands in respect of the company's estate, the committee of inspection may direct, or, if there is no committee of inspection, the liquidator may arrange for the sale or realisation of such part of those securities as is necessary. [285]

322.—(1) Where a liquidator has in his hands or under his control —

- (a) any unclaimed dividend or other moneys which have remained unclaimed for more than 6 months from the date when the dividend or other moneys became payable; or
- (b) after making final distribution, any unclaimed or undistributed moneys arising from the property of the company,

Unclaimed assets to be paid to Official Receiver.
U.K. s. 343.
Aust. s. 286.

he shall forthwith pay those moneys to the Official Receiver to be placed to the credit of the Companies Liquidation Account and shall be entitled to the prescribed certificate of receipt for the moneys so paid and that certificate shall be an effectual discharge to him in respect thereof.

(2) The Court may, at any time on the application of the Official Receiver, order any liquidator to submit to it an account of any unclaimed or undistributed funds, dividends or other moneys in his hands or under his control verified by affidavit and may direct an audit thereof and may direct him to pay those moneys to the Official Receiver to be placed to the credit of the Companies Liquidation Account.

(3) The interest arising from the investment of the moneys standing to the credit of the Companies Liquidation Account shall be paid into the Consolidated Fund.

(4) For the purposes of this section, the Court may exercise all the powers conferred by this Act with respect to the discovery and realisation of the property of the company and the provisions of this Act with respect thereto shall with such adaptations as are prescribed apply to proceedings under this section.

(5) This section shall not, except as expressly declared in this Act, deprive any person of any other right or remedy to which he is entitled against the liquidator or any other person.

(6) If any claimant makes any demand for any money placed to the credit of the Companies Liquidation Account, the Official Receiver upon being satisfied that the claimant is the owner of the money shall authorise payment thereof to be made to him out of that Account or, if it has been paid into the Consolidated Fund, may authorise payment of a like amount to be made to him out of moneys made available by Parliament for the purpose.

(7) Any person dissatisfied with the decision of the Official Receiver in respect of a claim made in pursuance of subsection (6) may appeal to the Court which may confirm, disallow or vary the decision.

(8) Where any unclaimed moneys paid to any claimant are afterwards claimed by any other person, that other person shall not be entitled to any payment out of the Companies Liquidation Account or out of the Consolidated Fund but such person may have recourse against the claimant to whom the unclaimed moneys have been paid.

(9) Any unclaimed moneys paid to the credit of the Companies Liquidation Account to the extent to which the unclaimed moneys have not been under this section paid out

of that Account shall, on the lapse of 7 years from the date of the payment of the moneys to the credit of that Account, be paid into the Consolidated Fund. [286

323.—(1) Unless expressly directed to do so by the Official Receiver, a liquidator shall not be liable to incur any expense in relation to the winding up of a company unless there are sufficient available assets.

Expenses of winding up where assets insufficient. Aust. s. 287.

(2) The Official Receiver may, on the application of a creditor or a contributory, direct a liquidator to incur a particular expense on condition that the creditor or contributory indemnifies the liquidator in respect of the recovery of the amount expended and if the Official Receiver so directs gives such security to secure the amount of the indemnity as the Official Receiver thinks reasonable.

[287

324. Subject to section 296 (9), where a resolution is passed at an adjourned meeting of any creditors or contributories of a company, the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed and not on any earlier date. [288

Resolutions passed at adjourned meetings of creditors and contributories. U.K. s. 345. Aust. s. 288.

325.—(1) The Court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence, and may if it thinks fit for the purpose of ascertaining those wishes direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the Court.

Meetings to ascertain wishes of creditors or contributories. U.K. s. 346. Aust. s. 289.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Act or the articles. [289

326.—(1) District Judges shall be commissioners for the purpose of taking evidence under this Part, and the Court may refer the whole or any part of the examination of any witnesses under this Part to any person hereby appointed commissioner.

Special commission for receiving evidence. U.K. s. 348. Aust. s. 290.

(2) Every commissioner shall, in addition to any powers which he might lawfully exercise as a District Judge, have in the matter so referred to him the same powers as the Court of summoning and examining witnesses of requiring the production or delivery of documents of punishing defaults by witnesses and of allowing costs and expenses to witnesses.

(3) Unless otherwise ordered by the Court the taking of evidence by commissioners shall be in open court and shall be open to the public.

(4) The examination so taken shall be returned or reported to the Court in such manner as the Court directs.

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Subdivision (2) — Proof and ranking of claims

Proof of
debts.
U.K. ss. 316,
317.
Aust. s. 291.

327.—(1) In every winding up (subject in the case of insolvent companies to the application in accordance with the provisions of this Act of the law of bankruptcy) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as are subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

(2) Subject to section 328, in the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and debts provable and the valuation of annuities and future and contingent liabilities as are in force for the time being under the law relating to bankruptcy in relation to the estates of bankrupt persons, and all persons, who in any such case would be entitled to prove for and receive dividends out of the assets of the company, may come in under the winding up and make such claims against the company as they respectively are entitled to by virtue of this section.

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Priorities.
U.K. s. 319.
Aust. s. 292.
15/84.

328.—(1) Subject to the provisions of this Act, in a winding up there shall be paid in priority to all other unsecured debts —

(a) firstly, the costs and expenses of the winding up including the taxed costs of a petitioner payable

under section 256, the remuneration of the liquidator and the costs of any audit carried out pursuant to section 317;

- (b) secondly, all wages or salary (whether or not earned wholly or in part by way of commission) including any amount payable by way of allowance or reimbursement under any contract of employment or award or agreement regulating conditions of employment, of any employee not exceeding an amount that is equivalent to 5 months' salary whether for time or piecework in respect of services rendered by him to the company within a period of 4 months before the commencement of the winding up;
- (c) thirdly, all amounts due in respect of workmen's compensation under the Workmen's Compensation Act accrued before the commencement of the winding up; Cap. 354.
- (d) fourthly, all remuneration payable to any employee in respect of vacation leave, or in the case of his death to any other person in his right, accrued in respect of any period before the commencement of the winding up;
- (e) fifthly, all amounts due in respect of contributions payable during the 12 months next before the commencement of the winding up by the company as the employer of any person under any written law relating to employees superannuation or provident funds or under any scheme of superannuation or retirement benefit which is an approved scheme under the law relating to income tax; and
- (f) sixthly, the amount of all tax assessed under any written law before the date of the commencement of the winding up or assessed at any time before the time fixed for the proving of debts has expired.

(2) For the purposes of subsection (1) (b), "employee" shall be deemed to include a subcontractor of labour, and "salary" shall be deemed to include money due to a subcontractor of labour and any payment on account of wages or salary payable during a period of notice of 15/84.

termination of employment or in lieu of notice of such termination, as the case may be.

(3) The debts in each class, specified in subsection (1), shall rank in the order therein specified but as between debts of the same class shall rank equally between themselves, and shall be paid in full, unless the property of the company is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(4) Where any payment has been made to any employee of the company on account of wages, salary or vacation leave out of money advanced by a person for that purpose, the person by whom the money was advanced shall, in a winding up, have a right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which the employee would have been entitled to priority in the winding up has been diminished by reason of the payment, and shall have the same right of priority in respect of that amount as the employee would have had if the payment had not been made.

(5) So far as the assets of the company available for payment of general creditors are insufficient to meet any preferential debts specified in subsection (1) (b), (d) and (e) and any amount payable in priority by virtue of subsection (4), those debts shall have priority over the claims of the holders of debentures under any floating charge created by the company, and shall be paid accordingly out of any property comprised in or subject to that charge.

(6) Where the company is under a contract of insurance (entered into before the commencement of the winding up) insured against liability to third parties, then if any such liability is incurred by the company (either before or after the commencement of the winding up) and an amount in respect of that liability is or has been received by the company or the liquidator from the insurer the amount shall, after deducting any expenses of or incidental to getting in such amount, be paid by the liquidator to the third party in respect of whom the liability was incurred to the extent necessary to discharge that liability or any part of that liability remaining undischarged in priority to all payments in respect of the debts referred to in subsection (1).

(7) If the liability of the insurer to the company is less than the liability of the company to the third party, nothing

in subsection (6) shall limit the rights of the third party in respect of the balance.

(8) Subsections (6) and (7) shall have effect notwithstanding any agreement to the contrary entered into after the commencement of this Act.

(9) Notwithstanding anything in subsection (1) —

(a) paragraph (c) of that subsection shall not apply in relation to the winding up of a company in any case where the company is being wound up voluntarily merely for the purpose of reconstruction or of amalgamation with another company and the right to the compensation has on the reconstruction or amalgamation been preserved to the person entitled thereto, or where the company has entered into a contract with an insurer in respect of any liability under any law relating to workmen's compensation; and

(b) where a company has given security for the payment or repayment of any amount to which paragraph (f) of that subsection relates, that paragraph shall apply only in relation to the balance of any such amount remaining due after deducting therefrom the net amount realised from such security.

(10) Where in any winding up assets have been recovered under an indemnity for costs of litigation given by certain creditors, or have been protected or preserved by the payment of moneys or the giving of indemnity by creditors, or where expenses in relation to which a creditor has indemnified a liquidator have been recovered, the Court may make such order as it thinks just with respect to the distribution of those assets and the amount of those expenses so recovered with a view to giving those creditors an advantage over others in consideration of the risks run by them in so doing. [292]

Subdivision (3) — Effect on other transactions

329.—(1) Any transfer, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company which, had it been made or done by or against an individual, would in his bankruptcy

Undue preference.
U.K. s. 320.
Aust. s. 293.

under the law of bankruptcy be void or voidable shall in the event of the company being wound up be void or voidable in like manner.

(2) For the purposes of this section, the date which corresponds with the date of presentation of the bankruptcy petition in the case of an individual shall be —

(a) in the case of a winding up by the Court —

(i) the date of the presentation of the petition; or

(ii) where before the presentation of the petition a resolution has been passed by the company for voluntary winding up, the date upon which the resolution to wind up the company voluntarily is passed, whichever is the earlier; and

(b) in the case of a voluntary winding up, the date upon which the winding up is deemed by this Act to have commenced.

(3) Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void. [293

Effect of floating charge.
U.K. s. 322.
Aust. s. 294.

330. A floating charge on the undertaking or property of the company created within 6 months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid except to the amount of any cash paid to the company at the time of or subsequently to the creation of and in consideration for the charge together with interest on that amount at the rate of 5% per annum. [294

Liquidator's right to recover in respect of certain sales to or by company.
Aust. s. 295.

331.—(1) Where any property, business or undertaking has been acquired by a company for a cash consideration within a period of two years before the commencement of the winding up of the company —

(a) from a person who was at the time of the acquisition a director of the company; or

(b) from a company of which, at the time of the acquisition, a person was a director who was also a director of the first-mentioned company,

the liquidator may recover from the person or company from which the property, business or undertaking was

acquired any amount by which the cash consideration for the acquisition exceeded the value of the property, business or undertaking at the time of its acquisition.

(2) Where any property, business or undertaking has been sold by a company for a cash consideration within a period of two years before the commencement of the winding up of the company —

(a) to a person who was at the time of the sale a director of the company; or

(b) to a company of which at the time of the sale a person was a director who was also a director of the company first-mentioned in this subsection,

the liquidator may recover from the person or company to which the property, business or undertaking was sold any amount by which the value of the property, business or undertaking at the time of the sale exceeded the cash consideration.

(3) For the purposes of this section, the value of the property, business or undertaking includes the value of any goodwill or profits which might have been made from the business or undertaking or similar considerations.

(4) In this section “cash consideration”, in relation to an acquisition or sale by a company, means consideration for such acquisition or sale payable otherwise than by the issue of shares in the company. [295

332.—(1) Where any part of the property of a company consists of —

(a) any estate or interest in land which is burdened with onerous covenants;

(b) shares in corporations;

(c) unprofitable contracts; or

(d) any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money,

the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto, may, with the leave of the Court or the committee of inspection and subject to this section, by writing signed by him, at any

Disclaimer of
onerous
property.
U.K. s. 323.
Aust. s. 296.

time within 12 months after the commencement of the winding up or such extended period as is allowed by the Court, disclaim the property; but where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power of disclaiming may be exercised at any time within 12 months after he has become aware thereof or such extended period as is allowed by the Court.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest and liabilities of the company and the property of the company in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The Court or the committee before or on granting leave to disclaim may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the Court or committee thinks just.

(4) The liquidator shall not be entitled to disclaim if an application in writing has been made to him by any person interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of 28 days after the receipt of the application or such further period as is allowed by the Court or the committee, given notice to the applicant that he intends to apply to the Court or the committee for leave to disclaim, and, in the case of a contract, if the liquidator after such an application in writing does not within that period or further period disclaim the contract the liquidator shall be deemed to have adopted it.

(5) The Court may, on the application of a person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Court thinks just, and any damages payable under the order to that person may be proved by him as a debt in the winding up.

(6) The Court may, on the application of a person who either claims any interest in any disclaimed property or is

under any liability not discharged by this Act in respect of any disclaimed property and on hearing such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any person entitled thereto, or to whom it seems just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just, and on any such vesting order being made and an office copy thereof being lodged with the Registrar and with the Official Receiver and if the order relates to land with the appropriate authority concerned with the recording or registration of dealings in that land, as the case requires, the property comprised therein shall vest accordingly in the person therein named in that behalf without any further conveyance, transfer or assignment.

(7) Notwithstanding anything in subsection (6), where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee, except upon the terms of making that person —

- (a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or
- (b) if the Court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date,

and in either event, if the case so requires, as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the Court may vest the estate and interest of the company in the property in any person liable personally or in a representative character and either alone or jointly with the company to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the company.

(8) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up. [296

Interpretation.
Aust. s. 297.

333. For the purposes of sections 334 and 335 —

“goods” includes all chattels personal;

“bailiff” includes any officer charged with the execution of a writ or other process. [297]

Restriction of rights of creditor as to execution or attachment.
U.K. s. 325.
Aust. s. 298.

334.—(1) Where a creditor has issued execution against the goods or land of a company or has attached any debt due to the company and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator unless he has completed the execution or attachment before the date of the commencement of the winding up, but —

(a) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor so had notice shall for the purposes of this section be substituted for the date of the commencement of the winding up;

(b) a person who purchases in good faith under a sale by the bailiff any goods of a company on which an execution has been levied shall in all cases acquire a good title to them against the liquidator; and

(c) the rights conferred by this subsection on the liquidator may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court thinks fit.

(2) For the purposes of this section —

(a) an execution against goods is completed by seizure and sale;

(b) an attachment of a debt is completed by receipt of the debt; and

(c) an execution against land is completed by sale or, in the case of an equitable interest, by the appointment of a receiver. [298]

Duties of bailiff as to goods taken in execution.
U.K. s. 326.
Aust. s. 299.

335.—(1) Subject to subsection (3), where any goods of a company are taken in execution and, before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the bailiff that a provisional liquidator has been appointed or that a winding up order has been made or that a

resolution for voluntary winding up has been passed, the bailiff shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or moneys so delivered, and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge.

(2) Subject to subsection (3), where under an execution in respect of a judgment for a sum exceeding \$100 the goods of a company are sold or money is paid in order to avoid sale, the bailiff shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for 14 days; and if within that time notice is served on him of a petition for the winding up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up and an order is made or a resolution is passed for the winding up, the bailiff shall pay the balance to the liquidator who shall be entitled to retain it as against the execution creditor.

(3) The rights conferred by this section on the liquidator may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court thinks fit.

[299

Subdivision (4) — Offences

336.—(1) Every person who, being a past or present officer or a contributory of a company which is being wound up —

(a) does not to the best of his knowledge and belief fully and truly disclose to the liquidator all the property movable and immovable of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company;

(b) does not deliver up to the liquidator, or as he directs —

(i) all the movable and immovable property of the company in his custody or under

Offences by officers of companies in liquidation.
U.K. s. 328.
Aust. s. 300.
15/84.

- his control and which he is required by law to deliver up; or
- (ii) all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up;
- (c) within 12 months next before the commencement of the winding up or at any time thereafter —
- (i) has concealed any part of the property of the company to the value of \$50 or upwards, or has concealed any debt due to or from the company;
 - (ii) has fraudulently removed any part of the property of the company to the value of \$50 or upwards;
 - (iii) has concealed, destroyed, mutilated or falsified, or has been privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to the property or affairs of the company;
 - (iv) has made or has been privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company;
 - (v) has fraudulently parted with, altered or made any omission in, or has been privy to fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company;
 - (vi) by any false representation or other fraud, has obtained any property for or on behalf of the company on credit which the company has not subsequently paid for;
 - (vii) has obtained on credit, for or on behalf of the company, under the false pretence that the company is carrying on its business, any property which the company has not subsequently paid for; or

- (viii) has pawned, pledged or disposed of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing was in the ordinary way of the business of the company;
- (d) makes any material omission in any statement relating to the affairs of the company;
- (e) knowing or believing that a false debt has been proved by any person fails for a period of one month to inform the liquidator thereof;
- (f) prevents the production of any book or paper affecting or relating to the property or affairs of the company;
- (g) within 12 months next before the commencement of the winding up or at any time thereafter, has attempted to account for any part of the property of the company by fictitious losses or expenses; or
- (h) within 12 months next before the commencement of the winding up or at any time thereafter, has been guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years.

(2) It shall be a good defence to a charge under subsection (1) (a), (b), (d) or subsection (1) (c) (i), (vii) or (viii) if the accused proves that he had no intent to defraud, and to a charge under subsection (1) (f) or subsection (1) (c) (iii) or (iv) if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(3) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under subsection (1) (c) (viii), every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in those circumstances shall be guilty of an offence and shall be liable on 15/84.

conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years. [300]

Inducement
to be
appointed
liquidator.
U.K. s. 336.
Aust. s. 301
(1).
15/84.

337. Any person who gives or agrees or offers to give to any member or creditor of a company any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 6 months. [301]

Penalty for
falsification
of books.
U.K. s. 329.
Aust. s. 301
(2).
15/84.

338. Every officer or contributory of any company being wound up who destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register or book of account or document belonging to the company with intent to defraud or deceive any person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years. [302]

Liability
where proper
accounts not
kept.
U.K. s. 331.
Aust. s. 303.
15/84.

339.—(1) If, on an investigation under any other Part or where a company is wound up, it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the investigation or winding up or the period between the incorporation of the company and the commencement of the investigation or winding up (whichever is the lesser) every officer who is in default shall, unless he acted honestly and shows that, in the circumstances in which the business of the company was carried on, the default was excusable, be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding one year.

(2) For the purposes of this section, proper books of account shall be deemed not to have been kept in the case of any company if there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of the annual stocktakings and (except in

the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified or if such books or accounts have not been kept in such manner as to enable them to be conveniently and properly audited, whether or not the company has appointed an auditor.

(3) If, in the course of the winding up of a company or in any proceedings against a company, it appears that an officer of the company who was knowingly a party to the contracting of a debt had, at the time the debt was contracted, no reasonable or probable ground of expectation, after taking into consideration the other liabilities, if any, of the company at the time of the company being able to pay the debt, the officer shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 3 months. [303] 15/84.

340.—(1) If, in the course of the winding up of a company or in any proceedings against a company, it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the Court, on the application of the liquidator or any creditor or contributory of the company, may, if it thinks proper to do so, declare that any person who was knowingly a party to the carrying on of the business in that manner shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Court directs.

Responsibility for fraudulent trading.
U.K. s. 332.
Aust. s. 304.

(2) Where a person has been convicted of an offence under section 339 (3) in relation to the contracting of such a debt as is referred to in that subsection, the Court, on the application of the liquidator or any creditor or contributory of the company, may, if it thinks proper to do so, declare that the person shall be personally responsible without any limitation of liability for the payment of the whole or any part of that debt.

(3) Where the Court makes any declaration pursuant to subsection (1) or (2), it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make provision for making the liability of any person under the declaration a

charge on any debt or obligation due from the company to him, or on any charge or any interest in any charge on any assets of the company held by or vested in him or any corporation or person on his behalf, or any person claiming as assignee from or through the person liable or any corporation or person acting on his behalf, and may from time to time make such further order as is necessary for the purpose of enforcing any charge imposed under this subsection.

(4) For the purpose of subsection (3), “assignee” includes any person to whom or in whose favour by the directions of the person liable the debt, obligation or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

15/84.

(5) Where any business of a company is carried on with the intent or for the purpose mentioned in subsection (1), every person who was knowingly a party to the carrying on of the business with that intent or purpose shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 7 years or to both.

15/84.

(6) Subsection (5) shall apply to a company whether or not it has been, or is in the course of being, wound up.

(7) This section shall have effect notwithstanding that the person concerned is criminally liable apart from this section in respect of the matters on the ground of which the declaration is made.

(8) On the hearing of an application under subsection (1) or (2), the liquidator may himself give evidence or call witnesses. [304

Power of
Court to
assess
damages
against delin-
quent
officers, etc.
U.K. s. 333.
Aust. s. 305.

341.—(1) If, in the course of winding up, it appears that any person who has taken part in the formation or promotion of the company or any past or present liquidator or officer has misapplied or retained or become liable or accountable for any money or property of the company or been guilty of any misfeasance or breach of trust or duty in relation to the company, the Court may on the application of the liquidator or of any creditor or contributory examine

into the conduct of such person, liquidator or officer and compel him to repay or restore the money or property or any part thereof with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust or duty as the Court thinks just.

(2) This section shall extend and apply to and in respect of the receipt of any money or property by any officer of the company during the two years preceding the commencement of the winding up whether by way of salary or otherwise appearing to the Court to be unfair or unjust to other members of the company.

(3) This section shall have effect notwithstanding that the offence is one for which the offender is criminally liable.

[305

342.—(1) If it appears to the Court, in the course of a winding up by the Court, that any past or present officer, or any member, of the company has been guilty of an offence in relation to the company for which he is criminally liable, the Court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator to prosecute the offender or to refer the matter to the Minister.

Prosecution
of delinquent
officers and
members of
company.
U.K. s. 334.
Aust. s. 306.

(2) If it appears to the liquidator, in the course of a voluntary winding up, that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter to the Minister and shall, in respect of information or documents in his possession or under his control which relate to the matter in question, furnish the Minister with such information and give to him such access to and facilities for inspecting and taking copies of any documents as he may require.

(3) If it appears to the liquidator, in the course of any winding up, that the company which is being wound up will be unable to pay its unsecured creditors more than 50 cents in the dollar, the liquidator shall forthwith report the matter in writing to the Official Receiver and shall furnish the Official Receiver with such information and give to him such access to and facilities for inspecting and taking copies of any document as the Official Receiver may require.

(4) Where any report is made under subsection (2) or (3), the Minister may, if he thinks fit, investigate the matter and may, if he thinks expedient, apply to the Court for an order conferring on him or any person designated by him for the purpose with respect to the company concerned all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the Court, but if it appears to him that the case is not one in which proceedings ought to be taken by him he shall inform the liquidator accordingly, and thereupon, subject to the previous approval of the Court the liquidator may himself take proceedings against the offender.

(5) If it appears to the Court in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty as aforesaid and that no report with respect to the matter has been made by the liquidator to the Minister, the Court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly this section shall have effect as though the report has been made in pursuance of subsection (2).

(6) If, where any matter is reported or referred to the Minister or the Official Receiver under this section, he considers that the case is one in which a prosecution ought to be instituted, he may institute proceedings accordingly, and the liquidator and every officer and agent of the company past and present, other than the defendant in the proceedings, shall give the Minister or the Official Receiver all assistance in connection with the prosecution which he is reasonably able to give.

(7) For the purpose of subsection (6), “agent”, in relation to a company, includes any banker or solicitor of the company and any person employed by the company as auditor, whether or not an officer of the company.

(8) If any person fails or neglects to give assistance in the manner required by subsection (6), the Court may, on the application of the Minister or the Official Receiver, direct that person to comply with the requirements of that subsection, and where any application is made under this subsection with respect to a liquidator the Court may, unless it appears that the failure or neglect to comply was due to

the liquidator not having in his hands sufficient assets of the company to enable him to do so, direct that the costs of the application shall be borne by the liquidator personally.

(9) The Minister may direct that the whole or any part of any costs and expenses properly incurred by the liquidator in proceedings brought under this section shall be defrayed out of moneys provided by Parliament.

(10) Subject to any direction given under subsection (9) and to any charges on the assets of the company and any debts to which priority is given by this Act, all such costs and expenses shall be payable out of those assets as part of the costs of winding up. [306

Subdivision (5) — Dissolution

343.—(1) Where a company has been dissolved, the Court may at any time within two years after the date of dissolution, on application of the liquidator of the company or of any other person who appears to the Court to be interested, make an order upon such terms as the Court thinks fit declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved. Power of Court to declare dissolution of company void. U.K. s. 352. Aust. s. 307.

(2) The person on whose application the order was made shall, within 7 days after the making of the order or such further time as the Court allows, lodge with the Registrar and with the Official Receiver an office copy of the order and if he fails to do so shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000. 15/84.

[307

344.—(1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, he may send to the company by post a letter to that effect and stating that if an answer showing cause to the contrary is not received within one month from the date thereof a notice will be published in the *Gazette* with a view to striking the name of the company off the register. Power of Registrar to strike defunct company off register. U.K. s. 353. Aust. s. 308.

(2) Unless the Registrar receives an answer within one month from the date of the letter to the effect that the company is carrying on business or is in operation, he may publish in the *Gazette* and send to the company by registered post a notice that at the expiration of 3 months

from the date of that notice the name of the company mentioned therein will unless cause is shown to the contrary be struck off the register and the company will be dissolved.

(3) If in any case where a company is being wound up the Registrar has reasonable cause to believe that —

- (a) no liquidator is acting;
- (b) the affairs of the company are fully wound up and for a period of 6 months the liquidator has been in default in lodging any return required to be made by him; or
- (c) the affairs of the company have been fully wound up under Division 2 and there are no assets or the assets available are not sufficient to pay the costs of obtaining an order of the Court dissolving the company,

he may publish in the *Gazette* and send to the company or the liquidator, if any, a notice to the same effect as that referred to in subsection (2).

(4) At the expiration of the time mentioned in the notice, the Registrar may, unless cause to the contrary is previously shown, strike the name of the company off the register, and shall publish notice thereof in the *Gazette*, and on the publication in the *Gazette* of the notice the company shall be dissolved; but —

- (a) the liability, if any, of every officer and member of the company shall continue and may be enforced as if the company had not been dissolved; and
- (b) nothing in this subsection shall affect the power of the Court to wind up a company the name of which has been struck off the register.

(5) If any person feels aggrieved by the name of the company having been struck off the register, the Court, on an application made by the person at any time within 15 years after the name of the company has been so struck off may, if satisfied that the company was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the name of the company be restored to the register, order the name of the company to be restored to the register, and upon an office copy of the order being lodged with the Registrar the company shall be

deemed to have continued in existence as if its name had not been struck off, and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(6) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office or, if no office has been registered, to the care of some officer of the company, or if there is no officer of the company whose name and address are known to the Registrar may be sent to each of the persons who subscribed the memorandum of the company addressed to him at the address mentioned in the memorandum. [308

345.—(1) Where, after a company has been dissolved, it is proved to the satisfaction of the Official Receiver —

Official Receiver to act as representative of defunct company in certain events. Aust. s. 309.

(a) that the company, if still existing, would be legally or equitably bound to carry out complete or give effect to some dealing, transaction or matter; and

(b) that in order to carry out complete or give effect thereto some purely administrative act, not discretionary, should have been done by or on behalf of the company, or should be done by or on behalf of the company, if still existing,

the Official Receiver may, as representing the company or its liquidator under this section, do or cause to be done any such act.

(2) The Official Receiver may execute or sign any relevant instrument or document adding a memorandum stating that he has done so in pursuance of this section, and such execution or signature shall have the same force, validity and effect as if the company if existing had duly executed such instrument or document. [309

346.—(1) Where, after a company has been dissolved, there remains any outstanding property, movable or immovable, including things in action and whether in or outside Singapore which was vested in the company or to which it was entitled, or over which it had a disposing power

Outstanding assets of defunct company to vest in Official Receiver. Aust. s. 310.

at the time it was so dissolved, but which was not got in, realised upon or otherwise disposed of or dealt with by the company or its liquidator, such property except called and uncalled capital, shall, for the purposes of the following sections of this Subdivision and notwithstanding any written law or rule of law to the contrary, by the operation of this section, be and become vested in the Official Receiver for all the estate and interest therein legal or equitable of the company or its liquidator at the date the company was dissolved, together with all claims, rights and remedies which the company or its liquidator then had in respect thereof.

(2) Where any claim, right or remedy of the liquidator may under this Act be made, exercised or availed of only with the approval or concurrence of the Court or some other person, the Official Receiver may for the purposes of this section make, exercise or avail himself of that claim, right or remedy without such approval or concurrence. [310

Outstanding
interests in
property how
disposed of.
Aust. s. 311.

347.—(1) Upon proof to the satisfaction of the Official Receiver that there is vested in him by operation of section 346 or by operation of any corresponding previous written law or of a law of a designated country corresponding with section 354 any estate or interest in property, whether solely or together with any other person, of a beneficial nature and not merely held in trust, the Official Receiver may sell or otherwise dispose of or deal with such estate or interest or any part thereof as he sees fit.

(2) The Official Receiver may sell or otherwise dispose of or deal with such property either solely or in concurrence with any other person in such manner for such consideration by public auction, public tender or private contract upon such terms and conditions as he thinks fit, with power to rescind any contract and resell or otherwise dispose of or deal with such property as he thinks expedient, and may make, execute, sign and give such contracts, instruments and documents as he thinks necessary.

(3) The Official Receiver shall be remunerated by such commission, whether by way of percentage or otherwise, as is prescribed in respect of the exercise of the powers conferred upon him by subsection (1).

(4) The moneys received by the Official Receiver in the exercise of any of the powers conferred on him by this

Subdivision shall be applied in defraying all costs, expenses, commission and fees incidental thereto and thereafter to any payment authorised by this Subdivision and the surplus, if any, shall be dealt with as if they were unclaimed moneys paid to the Official Receiver in pursuance of section 322. [311]

348. Property vested in the Official Receiver by operation of this Subdivision or by operation of any corresponding previous written law shall be liable and subject to all charges, claims and liabilities imposed thereon or affecting such property by reason of any statutory provision as to rates, taxes, charges or any other matter or thing to which such property would have been liable or subject had such property continued in the possession, ownership or occupation of the company; but there shall not be imposed on the Official Receiver or the Government any duty, obligation or liability whatsoever to do or suffer any act or thing required by any such statutory provision to be done or suffered by the owner or occupier other than the satisfaction or payment of any such charges, claims or liabilities out of the assets of the company so far as they are in the opinion of the Official Receiver properly available for and applicable to such payment. [312]

Liability of Official Receiver and Government as to property vested in Official Receiver. Aust. s. 312.

349.—(1) The Official Receiver shall —

- (a) record in a register a statement of any property coming to his hand or under his control or to his knowledge vested in him by operation of this Subdivision and of his dealings therewith;
- (b) keep accounts of all moneys arising therefrom and of how they have been disposed of; and
- (c) keep all accounts, vouchers, receipts and papers relating to such property and moneys.

Accounts and audit. Aust. s. 313.

(2) The Auditor-General shall have all the powers in respect of such accounts as are conferred upon him by any Act relating to audit of public accounts. [313]

Division 5 — Winding up of unregistered companies

350.—(1) For the purposes of this Division, “unregistered company” includes a foreign company and any partnership, association or company consisting of more than 5 members but does not include a company incorporated under this Act or under any corresponding previous written law.

Definition of unregistered company. U.K. ss. 398, 404. Aust. s. 314.

Provisions of Division cumulative.

(2) This Division shall be in addition to, and not in derogation of, any provisions contained in this or any other written law with respect to the winding up of companies by the Court and the Court or the liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies. [314

Winding up of unregistered companies.
U.K. ss. 399, 400.
Aust. s. 315.

351.—(1) Subject to this Division, any unregistered company may be wound up under this Part, which Part shall apply to an unregistered company with the following adaptations:

- (a) the principal place of business of such company in Singapore shall for all the purposes of the winding up be the registered office of the company;
- (b) no such company shall be wound up voluntarily;
- (c) the circumstances in which the company may be wound up are —
 - (i) if the company is dissolved or has ceased to have a place of business in Singapore or has a place of business in Singapore only for the purpose of winding up its affairs or has ceased to carry on business in Singapore;
 - (ii) if the company is unable to pay its debts;
 - (iii) if the Court is of opinion that it is just and equitable that the company should be wound up.

(2) An unregistered company shall be deemed to be unable to pay its debts if —

- (a) a creditor by assignment or otherwise to whom the company is indebted in a sum exceeding \$500 then due has served on the company, by leaving at its principal place of business in Singapore or by delivering to the secretary or a director, manager or principal officer of the company or by otherwise serving in such manner as the Court approves or directs, a demand under his hand requiring the company to pay the sum so due, and the company has for 3 weeks after the service of the demand neglected to pay the sum

or to secure or compound for it to the satisfaction of the creditor;

- (b) any action or other proceeding has been instituted against any member for any debt or demand due or claimed to be due from the company or from him in his character of member, and, notice in writing of the institution of the action or proceeding having been served on the company by leaving it at its principal place of business in Singapore or by delivering it to the secretary or a director, manager or principal officer of the company or by otherwise serving it in such manner as the Court approves or directs, the company has not within 10 days after service of the notice paid, secured or compounded for the debt or demand or procured the action or proceeding to be stayed or indemnified the defendant to his reasonable satisfaction against the action or proceeding and against all costs, damages and expenses to be incurred by him by reason thereof;
- (c) execution or other process issued on a judgment, decree or order obtained in any court in favour of a creditor against the company or any member thereof as such or any person authorised to be sued as nominal defendant on behalf of the company is returned unsatisfied; or
- (d) it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

(3) A company incorporated outside Singapore may be wound up as an unregistered company under this Division notwithstanding that it is being wound up or has been dissolved or has otherwise ceased to exist as a company under the laws of the place under which it was incorporated.

(4) In this section “to carry on business” has the same meaning as in section 366. [315

352.—(1) On an unregistered company being wound up every person shall be a contributory —

- (a) who is liable to pay or contribute to the payment of —
- (i) any debt or liability of the company;

Contribu-
tories in
winding up of
unregistered
company.
U.K. s. 401.
Aust. s. 316.

(ii) any sum for the adjustment of the rights of the members among themselves; or
 (iii) the costs and expenses of winding up; or
 (b) where the company has been dissolved in the place in which it is formed or incorporated, who immediately before the dissolution was so liable, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability.

(2) On the death or bankruptcy of any contributory, the provisions of this Act with respect to the personal representatives of deceased contributories and the assignees and trustees of bankrupt contributories respectively shall apply.

[316]

Power of Court to stay or restrain proceedings.
 U.K. ss. 402, 403.
 Aust. s. 317.

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

(2) Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company except by leave of the Court and subject to such terms as the Court imposes.

[317]

Outstanding assets of defunct unregistered company.
 Aust. s. 318.

354.—(1) Where an unregistered company the place of incorporation or origin of which is in a designated country has been dissolved and there remains in Singapore any outstanding property, movable or immovable, including things in action which was vested in the company or to which it was entitled or over which it had a disposing power at the time it was dissolved, but which was not got in, realised upon or otherwise disposed of or dealt with by the company or its liquidator before the dissolution, the property, except called and uncalled capital, shall, by the operation of this section, be and become vested, for all the estate and interest therein legal or equitable of the company

or its liquidator at the date the company was dissolved, in such person as is entitled thereto according to the law of the place of incorporation or origin of the company.

(2) Where the place of origin of an unregistered company is Singapore sections 345 to 349 (both inclusive) shall with such adaptations as may be necessary apply in respect of that company.

(3) Where it appears to the Minister that any law in force in any other country contains provisions similar to this section, he may, by notification in the *Gazette*, declare that other country to be a designated country for the purposes of this section. [318]

PART XI

VARIOUS TYPES OF COMPANIES, ETC.

Division 1 — Investment companies

355.—(1) In this Division, unless inconsistent with the context or subject-matter —

“investment company” means a corporation (not being a private company) for the time being declared by proclamation of the Minister to be an investment company;

“net tangible assets” means tangible assets at book values less total liabilities at book values and less any aggregate amount by which the book value of the marketable securities held by the corporation exceeds their market value.

(2) The Minister may, by proclamation published in the *Gazette*, declare to be an investment company any corporation which is engaged primarily in the making of investments in marketable securities for the purpose of revenue and for profit and not for the purpose of exercising control, and the Minister may, by like proclamation, revoke any proclamation declaring a corporation to be an investment company. [319]

356. An investment company shall not borrow an amount if that amount, or the sum of that amount and amounts previously borrowed by it and not repaid, exceeds an amount equivalent to 50% of its net tangible assets (or such larger percentage not exceeding 100% as the Registrar may, in any particular case, decide). [320]

Interpretation of this Division.
Aust. s. 334.
“investment company”.
49/73.

“net tangible assets”.

Proclamation of investment companies.

Restriction on borrowing by investment companies.
Aust. s. 335.
49/73
15/84.

Restriction
on invest-
ments of
investment
companies.
Aust. s. 336.
49/73.

357.—(1) An investment company shall not invest an amount in a corporation if that amount, or the sum of that amount and amounts previously invested by it in that corporation and still so invested, exceeds an amount equivalent to 10% of the net tangible assets of the investment company.

(2) An investment company shall not invest an amount in the ordinary shares of a corporation if that amount, or the sum of that amount and amounts previously invested by it in the ordinary shares of that corporation and still so invested, exceeds an amount equivalent to 10% of the subscribed ordinary share capital of the corporation.

15/84.

(3) Subsection (2) shall not apply in respect of a wholly-owned subsidiary of an investment company for the purpose of carrying out nominee, underwriting, dealing or other functions incidental to the business of an investment company but the other restrictions and prohibitions in this Part shall apply to a wholly-owned subsidiary of an investment company as they apply to the investment company.

[321

Restriction
on under-
writing by
investment
companies.
Aust. s. 337.
49/73.

358.—(1) An investment company shall not underwrite any issue of securities to an amount that, when added to the amount or amounts, if any, to which it has previously underwritten a current issue or issues of other securities (not being an amount or amounts in respect of which the underwriting obligation has been discharged), exceeds an amount equivalent to 40% of its net tangible assets.

Provisions for
divesting
securities
taken up on
underwriting.
49/73.

(2) Where —

- (a) an investment company has underwritten any issue of securities and, in relation to the underwriting, has not contravened subsection (1); and
- (b) the investment company, as a result of the underwriting, invests in a corporation, being an investment contrary to section 357,

the investment company shall be deemed not to have contravened a provision of that section by reason of so investing in the corporation if, at the expiration of 12 months after so investing —

- (c) the amount invested by it in the corporation does not exceed an amount equivalent to 10% of the

net tangible assets of the investment company;
and

- (d) it does not hold more than 10% of the subscribed ordinary share capital of the corporation.

(3) This section extends to and in relation to sub-underwriting as if the sub-underwriting were underwriting. [322

359. An investment company shall not issue a prospectus or permit a prospectus to be issued on its behalf unless the prospectus specifies —

Special requirements as to articles and prospectus. Aust. s. 338. 49/73.

- (a) the type of security in which it is among the objects of the company to invest; and
(b) whether it is among the objects of the company to invest within Singapore or outside Singapore or both. [323

360. No investment company shall purchase or after the expiration of 3 years after it is declared to be an investment company hold any shares in or debentures of —

Not to hold shares in other investment companies. Aust. s. 339. 49/73.

- (a) any other investment company; or
(b) any corporation incorporated outside Singapore which is engaged primarily in the making of investments in marketable securities for the purpose of revenue and for profit and not for the purpose of exercising control and which is specified by proclamation of the Minister.

[324

361.—(1) No investment company shall for the purpose of profit buy or sell or deal in any raw materials or manufactured goods, whether in existence or not, otherwise than by investing in companies trading in such materials or goods.

Not to speculate in commodities. Aust. s. 340. 49/73.

(2) Subsection (1) shall not apply to or in relation to —

- (a) any buying, selling or dealing by an investment company in pursuance of a contract entered into by the investment company before it was declared to be an investment company; or
(b) the selling of or the dealing in raw materials or manufactured goods acquired by the investment company before it was so declared. [325

Balance-sheets and accounts.
Aust. s. 341.
49/73.

362.—(1) An investment company shall attach to its balance-sheet a complete list of all the investments of the company as at the date of the balance-sheet showing the descriptions and quantities of such investments.

(2) An investment company shall show separately in the profit and loss account, in addition to any other matters required to be shown therein, income from underwriting, including sub-underwriting. [326]

Investment fluctuation reserve.
Aust. s. 342.
49/73.

363. The net profits and losses of an investment company from the purchase and sale of securities shall be respectively credited and debited by the company to a reserve account to be kept by it and to be called the “investment fluctuation reserve”. [327]

Penalties.
Aust. s. 343.
49/73
15/84.

364.—(1) If default is made by an investment company in complying with this Division, the investment company and every officer of the investment company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years and also to a default penalty not exceeding \$500.

(2) No transaction entered into by the company shall be invalid by reason only of such default. [328]

Division 2 — Foreign companies

Foreign companies to which this Division applies.
U.K. ss. 406–423.
Aust. s. 344.

365. This Division applies to a foreign company only if it has a place of business or is carrying on business in Singapore. [329]

Interpretation of this Division.

366.—(1) In this Division, unless the contrary intention appears —

“agent” means the person named in a memorandum of appointment or power of attorney lodged under section 368 (1) (e) or 370 (6) or under any corresponding previous written law;

“carrying on business” includes establishing or using a share transfer or share registration office or administering, managing or otherwise dealing with property situated in Singapore as an agent, legal personal representative, or trustee, whether by

servants or agents or otherwise, and “to carry on business” has a corresponding meaning.

(2) Notwithstanding subsection (1), a foreign company shall not be regarded as carrying on business in Singapore for the reason only that in Singapore it —

- (a) is or becomes a party to any action or suit or any administrative or arbitration proceeding or effects settlement of an action, suit or proceeding or of any claim or dispute;
- (b) holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs;
- (c) maintains any bank account;
- (d) effects any sale through an independent contractor;
- (e) solicits or procures any order which becomes a binding contract only if such order is accepted outside Singapore;
- (f) creates evidence of any debt or creates a charge on movable or immovable property;
- (g) secures or collects any of its debts or enforces its rights in regard to any securities relating to such debts;
- (h) conducts an isolated transaction that is completed within a period of 31 days, but not being one of a number of similar transactions repeated from time to time; or
- (i) invests any of its funds or holds any property. [330

367. Subject to and in accordance with any written law, a foreign company registered under this Division shall have power to hold immovable property in Singapore. [331

Power of foreign companies to hold immovable property.
Aust. s. 345.

368.—(1) Every foreign company shall, before it establishes a place of business or commences to carry on business in Singapore, lodge with the Registrar for registration —

- (a) a certified copy of the certificate of its incorporation or registration in its place of incorporation or origin or a document of similar effect;
- (b) a certified copy of its charter, statute or memorandum and articles or other instrument constituting or defining its constitution;

Documents, etc., to be lodged by foreign companies having place of business in Singapore.
U.K. s. 407.
Aust. s. 346 (1)–(3).
15/84.

- (c) a list of its directors containing similar particulars with respect to its directors as are by this Act required to be contained in the register of the directors, managers and secretaries of a company incorporated under this Act;
- (d) where the list includes directors resident in Singapore who are members of the local board of directors, a memorandum duly executed by or on behalf of the foreign company stating the powers of the local directors;
- (e) a memorandum of appointment or power of attorney under the seal of the foreign company or executed on its behalf in such manner as to be binding on the company and, in either case, verified in the prescribed manner, stating the names and addresses of two or more persons resident in Singapore, not including a foreign company, authorised to accept on its behalf service of process and any notices required to be served on the company;
- (f) notice of the situation of its registered office in Singapore and, unless the office is open and accessible to the public during ordinary business hours on each day (Saturdays, weekly and public holidays excepted), the days and hours during which it is open and accessible to the public;
- (g) a statutory declaration in the prescribed form made by the agents of the company,

and on payment of the appropriate fees and subject to this Act the Registrar shall register the company under this Division by registration of the documents.

(2) Where a memorandum of appointment or power of attorney lodged with the Registrar in pursuance of subsection (1) (e) is executed by a person on behalf of the company, a copy of the deed or document by which that person is authorised to execute the memorandum of appointment or power of attorney, verified by statutory declaration in the prescribed manner, shall be lodged with the Registrar and the copy shall for all purposes be regarded as an original.

(3) Subsection (1) shall apply to a foreign company which was not registered under the repealed written laws but which, immediately before the commencement of this Act, had a place of business or was carrying on business in Singapore and, on that date, has a place of business or is carrying on business in Singapore, as if it established that place of business or commenced to carry on that business on that date. [332

369.—(1) Notwithstanding anything in this Act or any rule of law, the Registrar shall refuse to register a company under this Division if he is satisfied that the foreign company is being used or is likely to be used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore or is acting or likely to act against the national security or interest.

Power to refuse registration of a foreign company in certain circumstances. 15/84.

(2) A foreign company aggrieved by the decision of the Registrar under subsection (1) may, within 30 days of the date of the decision, appeal to the Minister whose decision shall be final. [332A

370.—(1) A foreign company shall have a registered office in Singapore to which all communications and notices may be addressed and which shall be open and accessible to the public for not less than 5 hours between the hours of 9 a.m. and 5 p.m. each day, Saturdays, weekly and public holidays excepted.

As to registered office and agents of foreign companies. Aust. s. 346 (4)–(8).

(2) An agent, until he ceases to be such in accordance with subsection (4), shall —

- (a) continue to be the agent of the company;
- (b) be answerable for the doing of all such acts, matters and things, as are required to be done by the company under this Act; and
- (c) be personally liable to all penalties imposed on the company for any contravention of any of the provisions of this Act unless he satisfies the court hearing the matter that he should be not so liable.

(3) A foreign company or its agent may lodge with the Registrar a notice in writing stating that the agent has ceased to be the agent or will cease to be the agent on a date specified in the notice.

(4) The agent in respect of whom the notice has been lodged shall cease to be an agent on the expiration of a period of 21 days after the date of lodgment of the notice or on the date of the appointment of another agent the memorandum of whose appointment has been lodged in accordance with subsection (5), whichever is the earlier, but if the notice states a date on which he is to so cease and the date is later than the expiration of that period, on that date.

15/84.

(5) Where an agent ceases to be an agent and if as a result the company is left with only one agent in Singapore, it shall, within 21 days after the agent ceases to be such, appoint another agent.

(6) On the appointment of a new agent the company shall lodge a memorandum of the appointment and a statutory declaration in accordance with section 368 (1) and, if not already lodged in pursuance of section 368 (2), a copy of the deed or document or power of attorney, referred to in section 368 (2), verified in accordance with that subsection.

[333

Transitory provisions.
Aust. s. 346
(9), (10).

371. On the registration of a foreign company under this Division or the lodging with the Registrar of particulars of a change or alteration in a matter referred to in section 372 (1) (c), (d) or (f), the Registrar shall issue a certificate in the prescribed form under his hand and seal, which certificate shall be prima facie evidence in all courts of the particulars mentioned in the certificate.

[334

Return to be filed where documents, etc., altered.
U.K. s. 409.
Aust. s. 347.

372.—(1) Where any change or alteration is made in —

- (a) the charter, statutes, memorandum or articles of the foreign company or other instrument lodged with the Registrar;
- (b) the directors of the foreign company;
- (c) the agent or agents of the foreign company or the address of any agent;
- (d) the situation of the registered office of the foreign company in Singapore or of the days or hours during which it is open and accessible to the public;
- (e) the address of the registered office of the foreign company in its place of incorporation or origin;
- (f) the name of the foreign company; or

- (g) the powers of any directors resident in Singapore who are members of the local board of directors of the foreign company,

the foreign company shall, within one month or within such further period as the Registrar in special circumstances allows after the change or alteration, lodge with the Registrar particulars of the change or alteration and such documents as the regulations require.

(2) If a foreign company increases its authorised share capital it shall within one month or within such further period as the Registrar in special circumstances allows after such increase lodge with the Registrar notice of the amount from which and of the amount to which it has been so increased.

(3) If a foreign company not having a share capital increases the number of its members beyond the registered number it shall within one month or within such further period as the Registrar in special circumstances allows after the increase was resolved on or took place, lodge with the Registrar notice of the increase.

(4) If any order is made by a court under any law in force in the country in which a foreign company is incorporated which corresponds to section 210, the company shall, within one month or within such further period as the Registrar in special circumstances allows after the order was made, lodge with the Registrar an office copy of that order.

[335

373.—(1) Subject to this section, a foreign company shall, within two months of its annual general meeting, lodge with the Registrar a copy of its balance-sheet made up to the end of its last financial year in such form and containing such particulars and accompanied by copies of such documents as the company is required to annex, attach or send with its balance-sheet by the law for the time being applicable to that company in the place of its incorporation or origin, together with a statutory declaration in the prescribed form verifying that the copies are true copies of the documents so required.

Balance-
sheets.
U.K. s. 410.
Aust. s. 348.

(2) The Registrar may, if he is of the opinion that the balance-sheet and other documents referred to in subsection (1) do not sufficiently disclose the company's financial

position, require the company to lodge a balance-sheet within such period, in such form and containing such particulars and to annex thereto such documents as the Registrar by notice in writing to the company requires, but this subsection does not authorise the Registrar to require a balance-sheet to contain any particulars or the company to annex, attach or to send any documents that would not be required to be furnished if the company were a public company incorporated under this Act.

(3) The company shall comply with the requirements set out in the notice.

(4) Where a foreign company is not required by the law of the place of its incorporation or origin to hold an annual general meeting and prepare a balance-sheet the company shall prepare and lodge with the Registrar a balance-sheet within such period, in such form and containing such particulars and to annex thereto such documents as the directors of the company would have been required to prepare or obtain if the company were a public company incorporated under this Act.

(5) In addition to the balance-sheet and other documents required to be lodged with the Registrar by subsections (1) to (4), a foreign company shall lodge with the Registrar with such balance-sheet and other documents a duly audited statement showing its assets used in and liabilities arising out of its operations in Singapore as at the date to which its balance-sheet was made up and a duly audited profit and loss account which, in so far as is practicable, complies with the requirements of the Ninth Schedule and which gives a true and fair view of the profit or loss arising out of the company's operation in Singapore for the last preceding financial year of the company:

Provided that —

- (a) the company shall be entitled to make such apportionments of expenses incurred in connection with operations or administration affecting both Singapore and elsewhere and to add such notes and explanations as in its opinion are necessary or desirable in order to give a true and fair view of the profit or loss of its operation in Singapore; and

(b) the Registrar may waive compliance with this subsection in relation to any foreign company if he is satisfied that —

- (i) it is impractical to comply with this subsection having regard to the nature of the company's operations in Singapore;
- (ii) it would be of no real value having regard to the amount involved;
- (iii) it would involve expense unduly out of proportion to its value; or
- (iv) it would be misleading or harmful to the business of the company or to any company which is deemed by virtue of section 6 to be related to the company.

(6) A statement and profit and loss account shall be deemed to have been duly audited for the purposes of subsection (5) if it is accompanied by a report by an approved company auditor which complies, in so far as is practicable, with section 207.

(7) Without prejudice to the powers of the Registrar under subsection (5) (b), a foreign company may apply to the Registrar in writing for an order relieving the foreign company from any requirement of this section relating to the form and content of accounts or reports and the Registrar may make such an order either unconditionally or on condition that the foreign company complies with such other requirements relating to the form and content of the accounts or reports as the Registrar thinks fit to impose. 15/84.

(8) The Registrar shall not make an order under subsection (7) unless he is of the opinion that compliance with the requirements of this section would render the accounts or reports misleading or inappropriate to the circumstances of the foreign company or would impose unreasonable burdens on the foreign company. 15/84.

(9) The Registrar may make an order under subsection (7) which may be limited to a specific period and may from time to time revoke or suspend the operation of any such order. 15/84.

As to fee payable on registration of foreign company because of establishment of a share register in Singapore. Aust. s. 349.

374.—(1) Where, on the registration of a company as a foreign company or on the lodging by a foreign company of a notice under section 372 (2) the Registrar certifies in writing that he is satisfied that the company has established in Singapore a share transfer or share registration office but has not otherwise carried on, is not otherwise carrying on and does not propose otherwise to carry on business in Singapore, the liability to pay such part, if any, of the fee payable under item 17 or 18 of the Second Schedule in respect of the registration or the lodging of the notice as exceeds \$1,000 is, by force of this section, suspended until the company commences otherwise to carry on business in Singapore or fails to comply with subsection (2), whichever first occurs, but thereupon the company is liable to pay to the Registrar that part of that fee.

(2) A company shall, so long as a suspension under subsection (1) of liability to pay a fee in respect of the company continues, lodge with the Registrar in each year at the time when a copy of its balance-sheet is lodged with the Registrar a notice in the prescribed form containing the prescribed particulars with respect to the business being carried on in Singapore by the company.

(3) Where a foreign company, in respect of which the Registrar has issued a certificate under subsection (1), commences to carry on business in Singapore otherwise than by reason of establishing or using a share transfer or share registration office, the company shall, within 14 days after so commencing, lodge with the Registrar notice thereof in the prescribed form. [337

Obligation to state name of foreign company, whether limited, and country where incorporated. U.K. s. 411. Aust. s. 350.

375.—(1) A foreign company shall —

- (a) conspicuously exhibit outside its registered office and every place of business established by it in Singapore in romanised letters its name and the place where it is formed or incorporated;
- (b) cause its name and the place where it is formed or incorporated to be stated in legible romanised letters on all its bill-heads and letter paper and in all its notices, prospectuses and other official publications; and
- (c) if the liability of its members is limited (unless the last word of its name is the word “Limited” or

“Berhad” or the abbreviation “Ltd.” or “Bhd.”), cause notice of that fact —

- (i) to be stated in legible characters in every prospectus issued by it and in all its bill-heads, letter paper, notices, and other official publications in Singapore; and
- (ii) except in the case of a banking corporation, to be exhibited outside its registered office and every place of business established by it in Singapore.

(2) Where the name of a foreign company is indicated on the outside of its registered office or any place of business established by it in Singapore or on any of the documents referred to in subsection (1) in characters or in any other way than by the use of romanised letters, this section relating to the exhibition or statement of its name shall be deemed not to have been complied with unless the name of the company is exhibited outside such office or place of business or stated on such document in romanised letters not smaller than any of the characters so exhibited or stated on the relevant office, place of business or document.

[338]

376. Any document required to be served on a foreign company shall be sufficiently served —

Service of
notice.
U.K. s. 412.
Aust. s. 351.

- (a) if addressed to the foreign company and left at or sent by post to its registered office in Singapore;
- (b) if addressed to an agent of the company and left at or sent by post to his registered address; or
- (c) in the case of a foreign company which has ceased to maintain a place of business in Singapore, if addressed to the foreign company and left at or sent by post to its registered office in the place of its incorporation.

[339]

377.—(1) If a foreign company ceases to have a place of business or to carry on business in Singapore, it shall, within 7 days after so ceasing, lodge with the Registrar notice of that fact, and as from the day on which the notice is so lodged its obligation to lodge any document (not being a document that ought to have been lodged before that day) with the Registrar shall cease, and the Registrar shall upon

Cesser of
business in
Singapore.
U.K. s. 413
(2).
Aust. s. 352.

the expiration of 12 months after the lodging of the notice remove the name of that foreign company from the register.

(2) If a foreign company goes into liquidation or is dissolved in its place of incorporation or origin —

- (a) each person who immediately prior to the commencement of the liquidation proceedings was an agent shall, within one month after the commencement of the liquidation or the dissolution or within such further time as the Registrar in special circumstances allows, lodge or cause to be lodged with the Registrar notice of that fact and, when a liquidator is appointed, notice of such appointment; and
- (b) the liquidator shall, until a liquidator for Singapore is duly appointed by the Court, have the powers and functions of a liquidator for Singapore.

(3) A liquidator of a foreign company appointed for Singapore by the Court or a person exercising the powers and function of such a liquidator —

- (a) shall, before any distribution of the foreign company's assets is made, by advertisement in a newspaper circulating generally in each country where the foreign company had been carrying on business prior to the liquidation if no liquidator has been appointed for that place, invite all creditors to make their claims against the foreign company within a reasonable time prior to the distribution;
- (b) save as otherwise provided in subsection (7), shall not, without obtaining an order of the Court, pay out any creditor to the exclusion of any other creditor of the foreign company;
- (c) shall, unless otherwise ordered by the Court, only recover and realise the assets of the foreign company in Singapore and shall, subject to paragraph (b) and subsection (7), pay the net amount so recovered and realised to the liquidator of that foreign company for the place where it was formed or incorporated after paying any debts and satisfying any liabilities incurred in Singapore by the foreign company.

(4) Where a foreign company has been wound up so far as its assets in Singapore are concerned and there is no liquidator for the place of its incorporation or origin the liquidator may apply to the Court for directions as to the disposal of the net amount recovered in pursuance of subsection (3).

(5) On receipt of a notice from an agent that the company has been dissolved the Registrar shall remove the name of the company from the register.

(6) Where the Registrar has reasonable cause to believe that a foreign company has ceased to carry on business or to have a place of business in Singapore the provisions of this Act relating to the striking off the register of the names of defunct companies shall with such adaptations as are necessary extend and apply accordingly.

(7) Section 328 shall apply to a foreign company wound up or dissolved pursuant to this section as if for references to a company there were substituted references to a foreign company.

(8) Where the Registrar is satisfied that a foreign company is being used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore or against the national security or interest, he shall strike the name of the foreign company off the register and it shall thereupon cease to be registered as a foreign company under this Division. 15/84.

(9) Any person aggrieved by the decision of the Registrar under subsection (8) may, within 30 days of the date of the decision, appeal to the Minister whose decision shall be final. 15/84.
[340

378.—(1) Except with the consent of the Minister, a foreign company shall not be registered by a name that, in the opinion of the Registrar, is undesirable or is a name, or a name of a kind, that the Minister has directed the Registrar not to accept for registration. Restriction
on use of
certain
names.
Aust. s. 353.

(2) Except with the consent of the Minister, any change in the name of a foreign company shall not be registered if in the opinion of the Registrar the new name of the company is undesirable or is a name, or a name of a kind, that the

Minister has directed the Registrar not to accept for registration, notwithstanding that particulars of the change have been lodged in accordance with section 372.

(3) No foreign company to which this Division applies shall use in Singapore any name other than that under which it is registered under this Division.

15/84.

(4) If default is made in complying with subsection (3), the foreign company, every officer of the company who is in default and every agent of the company who knowingly and wilfully authorises or permits the default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty. [341

Branch
register.
Aust. s. 354.

379.—(1) Subject to this section, a foreign company which has a share capital and has any member who is resident in Singapore shall keep at its registered office in Singapore or at some other place in Singapore a branch register for the purpose of registering shares of members resident in Singapore who apply to have the shares registered therein.

(2) The company shall not be obliged to keep a branch register pursuant to subsection (1) until after the expiration of two months from the receipt by it of an application in writing by a member resident in Singapore for registration in its branch register in Singapore of the shares held by the member.

15/84.

(3) If default is made in complying with subsection (1), the foreign company, every officer of the company who is in default and every agent of the company who knowingly and wilfully authorises or permits the default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

(4) This section shall not apply to any foreign company which by its constitution prohibits any invitation to the public to subscribe for shares in the company.

(5) Every such register shall be kept in the manner provided by Division 4 of Part V as though the register were the register of a company and transfers shall be effected on such register in the same manner and at the same charges as on the principal register of the company and transfers lodged at its registered office in Singapore shall be binding

on the company and the Court shall have the same powers in relation to rectification of the register as it has in respect of the register of a company incorporated in Singapore.

(6) Where a foreign company opens a branch register in Singapore, it shall within 14 days after the opening thereof lodge with the Registrar notice of that fact specifying the address where the register is kept.

(7) Where any change is made in the place where the register is kept or where the register is discontinued, the company shall within 14 days of the change or discontinuance lodge notice of the change or discontinuance with the Registrar.

(8) Where a company or corporation is entitled pursuant to a law of the place of incorporation of a foreign company corresponding with section 215 to give notice to a dissenting shareholder in that foreign company that it desires to acquire any of his shares registered on a branch register kept in Singapore, this section shall cease to apply to that foreign company until —

(a) the shares have been acquired; or

(b) that company or corporation has ceased to be entitled to acquire the shares. [342]

380. Subject to this Act, on application in that behalf by a member resident in Singapore the foreign company shall register in a branch register of the company the shares held by a member which are registered in any other register kept by the company. [343]

Registration of shares in branch register. Aust. s. 355.

381. Subject to this Act, on application in that behalf by a member holding shares registered in a branch register, the foreign company shall remove the shares from the branch register and register them in such other register within Singapore as is specified in the application. [344]

Removal of shares from branch register. Aust. s. 356.

382. Sections 190, 191 and 192 shall, with such adaptations as are necessary, apply respectively to the index of persons holding shares in a branch register and to the inspection and the closing of the register. [345]

Index of members, inspection and closing of branch registers. Aust. s. 357.

Application of provisions of Act relating to transfer.
Aust. s. 358.

383. Sections 126, 127, 128 (1), 130 (1) and (3) and 194 shall apply with necessary adaptations with respect to the transfer of shares on and the rectification of the branch register of a foreign company. [346]

Branch register to be prima facie evidence.
Aust. s. 359.

384. A branch register shall be prima facie evidence of any matters by this Division directed or authorised to be inserted therein. [347]

Certificate as to share-holding.
Aust. s. 360.

385. A certificate under the seal of a foreign company specifying any shares held by any member of that company and registered in the branch register shall be prima facie evidence of the title of the member to the shares and the registration of the shares in the branch register. [348]

Penalties.
Aust. s. 361.
15/84.

386. If default is made by any foreign company in complying with any provision of this Division, other than a provision in which a penalty or punishment is expressly mentioned, the company and every officer of the company who is in default and every agent of the company who knowingly and wilfully authorises or permits the default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty. [349]

PART XII

GENERAL

Division 1 — Enforcement of Act

Service of documents on company.
U.K. s. 437.
Aust. s. 362.

387. A document may be served on a company by leaving it at or sending it by registered post to the registered office of the company. [350]

Security for costs.
U.K. s. 447.
Aust. s. 363.

388.—(1) Where a corporation is plaintiff in any action or other legal proceeding the court having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs and stay all proceedings until the security is given.

Costs.

(2) The costs of any proceeding before a court under this Act shall be borne by such party to the proceeding as the court may, in its discretion, direct. [351]

389. Any person summoned for examination under Part IX or under section 285 or 286 may, at his own cost, employ a solicitor who shall be at liberty to put to him such questions as the inspector, Court or District Judge considers just for the purpose of enabling him to explain or qualify any answers given by him. [352]

As to rights of witnesses to legal representation. U.K. s. 270 (6). Aust. s. 249 (5).

390.—(1) Where by the exercise of reasonable diligence a company is unable to discover the whereabouts of a shareholder for a period of not less than 10 years the company may cause an advertisement to be published in a newspaper circulating in the place shown in the register of members as the address of the shareholder stating that the company after the expiration of one month from the date of the advertisement intends to transfer the shares to the Official Receiver.

Disposal of shares of shareholder whose whereabouts unknown. Aust. s. 364.

(2) If, after the expiration of one month from the date of the advertisement, the whereabouts of the shareholder remain unknown, the company may transfer the shares held by the shareholder in the company to the Official Receiver and for that purpose may execute for and on behalf of the owner a transfer of those shares to the Official Receiver.

(3) The Official Receiver shall sell or dispose of any shares so received in such manner and at such time as he thinks fit and shall deal with the proceeds of the sale or disposal as if they were moneys paid to him pursuant to section 322. [353]

391.—(1) If in any proceeding for negligence, default, breach of duty or breach of trust against a person to whom this section applies it appears to the court before which the proceedings are taken that he is or may be liable in respect thereof but that he has acted honestly and reasonably and that, having regard to all the circumstances of the case including those connected with his appointment, he ought fairly to be excused for the negligence, default or breach the court may relieve him either wholly or partly from his liability on such terms as the court thinks fit.

Power to grant relief. U.K. s. 448. Aust. s. 365.

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust he may apply to the Court for relief,

and the Court shall have the same power to relieve him as under this section it would have had if it had been a court before which proceedings against him for negligence, default, breach of duty or breach of trust had been brought.

(3) The persons to whom this section applies are —

- (a) officers of a corporation;
- (b) persons employed by a corporation as auditors, whether they are or are not officers of the corporation;
- (c) experts within the meaning of this Act; and
- (d) persons who are receivers, receivers and managers or liquidators appointed or directed by the Court to carry out any duty under this Act in relation to a corporation and all other persons so appointed or so directed. [354

Irregularities in proceedings.
Aust. s. 366.

392.—(1) No proceeding under this Act shall be invalidated by any defect, irregularity or deficiency of notice or time unless the Court is of opinion that substantial injustice has been or may be caused thereby which cannot be remedied by any order of the Court.

(2) The Court may, if it thinks fit, make an order declaring that such proceeding is valid notwithstanding any such defect, irregularity or deficiency.

(3) Without affecting the generality of subsections (1) and (2) or of any other provision of this Act, where any omission, defect, error or irregularity (including the absence of a quorum at any meeting of the company or of the directors) has occurred in the management or administration of a company whereby any breach of any of the provisions of this Act has occurred, or whereby there has been default in the observance of the memorandum or articles of the company or whereby any proceedings at or in connection with any meeting of the company or of the directors thereof or any assemblage purporting to be such a meeting have been rendered ineffective including the failure to make or lodge any declaration of solvency pursuant to section 293, the Court —

- (a) may, either of its own motion or on the application of any interested person, make such order as it thinks fit to rectify or cause to be rectified or to negative or modify or cause to be modified the

consequences in law of any such omission, defect, error or irregularity, or to validate any act, matter or thing rendered or alleged to have been rendered invalid by or as a result of any such omission, defect, error or irregularity;

- (b) shall, before making any such order, satisfy itself that such an order would not do injustice to the company or to any member or creditor thereof;
- (c) where any such order is made, may give such ancillary or consequential directions as it thinks fit; and
- (d) may determine what notice or summons is to be given to other persons of the intention to make any such application or of the intention to make such an order, and whether and how it should be given or served and whether it should be advertised in any newspaper.

(4) The Court, whether the company is in process of being wound up or not, may enlarge or abridge any time for doing any act or taking any proceeding allowed or limited by this Act or any rules or regulations made thereunder upon such terms, if any, as the justice of the case may require and any such enlargement may be ordered although the application for the same is not made until after the time originally allowed or limited. [355]

393. No inspector appointed under this Act shall require disclosure by a solicitor of any privileged communication made to him in that capacity, except as respects the name and address of his client. [356]

Privileged communications.
U.K. s. 175.
Aust. s. 367.

394.—(1) If, on an application made to a judge of the Court in chambers by or on behalf of the Minister, there is shown to be reasonable cause to believe that any person has, while an officer of a company, committed an offence in connection with the management of the company's affairs and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company, an order may be made —

Production and inspection of books where offence suspected.
U.K. s. 441.
Aust. s. 368.

- (a) authorising any person named therein to inspect such books or papers or any of them for the purpose of investigating and obtaining evidence of the offence; or

(b) requiring the secretary or such other officer as is named in the order to produce such books or papers or any of them to a person named in the order at a place so named.

(2) No appeal shall lie against any order or decision of a Judge on or in relation to an application under this section.

[357]

Form of registers, etc. U.K. s. 436. Aust. s. 369.

395.—(1) For the purposes of this Act, any register, index, minute book or book of account may be kept either by making entries in a bound book or by recording the matters in question in any other permanent manner.

15/84.

(2) Where any register, index, minute book or book of account required by this Act to be kept is not kept by making entries in a bound book, but by some other means —

(a) reasonable precautions shall be taken for guarding against falsification and for facilitating the discovery of any falsification; and

(b) proper facilities shall be provided to enable the register, index, minute book or book of account to be inspected,

and, where default is made in complying with this subsection, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

[358]

Inspection of registers. Aust. s. 370.

396.—(1) Any register, minute book or document of a corporation which is by this Act required to be available for inspection shall, subject to and in accordance with this Act, be available for inspection at the place where in accordance with this Act it is kept during the hours in which the registered office of the corporation is accessible to the public.

(2) Any person permitted by this Act to inspect any register, minute book or document of a corporation may make copies of or take extracts from it and any officer of the corporation who fails to allow any person so permitted to make a copy of or take extracts from the register, minute book or document, as the case may be, shall be guilty of an offence.

[359]

397.—(1) Where under this Act a corporation is required to lodge with the Registrar any instrument, certificate, contract or document or a certified copy thereof and the same is not written in the English language, the corporation shall lodge at the same time with the Registrar a certified translation thereof in the English language.

Translations
of instru-
ments.
Aust. s. 371.

(2) Where under this Act a corporation is required to make available for public inspection any instrument, certificate, contract or document and the same is not written in the English language, the corporation shall keep at its registered office in Singapore a certified translation thereof in the English language.

(3) Where any accounts, minute books or other records of a corporation required by this Act to be kept are not kept in the English language, the directors of the corporation shall cause a true translation of such accounts, minute books and other records to be made from time to time at intervals of not more than 7 days and shall cause such translations to be kept with the original accounts, minute books and other records for so long as the original accounts, minute books and other records are required by this Act to be kept.

[360

398. A certificate of incorporation under the hand and seal of the Registrar shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the company referred to therein is duly incorporated under this Act.

Certificate of
incorporation
conclusive
evidence.
U.K. s. 15.
Aust. s. 372.

[361

399.—(1) If any person in contravention of this Act refuses or fails to permit the inspection of any register, minute book or document or to supply a copy of any register, minute book or document the Court may by order compel an immediate inspection of the register, minute book or document or order the copy to be supplied.

Court may
compel com-
pliance.
Aust. s. 373.

(2) If any officer or former officer of a company has failed or omitted to do any act, matter or thing which under this Act he is or was required or directed to do, the Court on the application of the Registrar or any member of the company or the Official Receiver or liquidator may, by order, require that officer or former officer to do such act, matter or thing forthwith or within such time as is allowed

by the order, and for the purpose of complying with any such order a former officer shall be deemed to have the same status, powers and duties as he had at the time the act, matter or thing should have been done. [362

Division 2 — Offences

Restriction
on offering
shares,
debentures,
etc., for sub-
scription or
purchase.
Aust. s. 374.

400.—(1) A person shall not, whether by appointment or otherwise, go from place to place —

- (a) offering shares for subscription or purchase to the public or any member of the public; or
- (b) seeking or receiving offers to subscribe for or to purchase shares from the public or from any member of the public.

(2) Subsection (1) shall not apply in the case of the shares of any corporation which, after notice of intention in the form prescribed to apply for exemption from subsection (1) has been advertised in a local daily newspaper has applied to the President for such exemption and the application has on the recommendation of the Minister been granted, but such exemption may at any time be revoked by order of the President.

(3) A person shall not make an offer to the public or to any member of the public (not being a person whose ordinary business it is to buy or sell shares, whether as principal or agent) of any shares for purchase.

(4) Subsection (3) shall not apply —

- (a) where the shares to which the offer relates are shares of a class which are quoted on, or in respect of which permission to deal has been granted by, any prescribed stock exchange and the offer so states and specifies the stock exchange;
- (b) where the shares to which the offer relates are shares which a corporation has allotted or agreed to allot with a view to their being offered for sale to the public and such offer is accompanied by a document that complies with all laws and rules of law as to prospectuses;
- (c) to any application for shares in or debentures of a corporation or to any invitation to deposit money with or lend money to a corporation

which is issued, circulated, distributed or made subject to and in accordance with Division 1 of Part IV;

(d) where the offer relates to —

(i) an interest to which Division 5 of Part IV applies and is accompanied by a statement in writing as required by that Division; or

(ii) deposits or loans to a corporation of the kind referred to in section 44 (6); or

(e) to any advice as to the price at which a management company is prepared to buy or sell any interest to which Division 5 of Part IV applies, given or sent by the management company to any person to whom the management company has given or sent a statement in writing relating to such interest which complies with that Division within the period of 6 months immediately preceding the giving or sending of the advice.

(5) Every person who acts, incites, causes or procures ^{15/84.} any person to act in contravention of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 6 months or to both and in the case of a second or subsequent offence to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

(6) Where a person convicted of an offence under this section is a corporation, every officer concerned in the management of the corporation shall be guilty of the like offence unless he proves that the act constituting the offence took place without his knowledge or consent.

(7) Where any person is convicted of having made an offer in contravention of this section, the Court before which he is convicted may order that any contract made as a result of the offer shall be void and may give such consequential directions as it thinks proper for the repayment of any money or the retransfer of any shares; and an appeal against the order and any consequential directions shall lie to the Court.

(8) Subject to this section, a person shall not make any oral invitation or offer to the public or to any member of the public to subscribe for or to purchase shares.

(9) In this section, “shares” means shares of a corporation whether a corporation in existence or to be formed and includes debentures and units and (without affecting the generality of the expression “debentures”) all such documents (including those referred to as bonds) as confer or purport to confer on the holder thereof any claim against a corporation, whether such claim is present or future or certain or contingent or ascertained or sounding only in damages and also includes any interest to which Division 5 of Part IV applies.

(10) In this section, a reference to an offer or offering of shares for subscription or purchase shall be construed as including an offer of shares by way of barter or exchange and a reference to an offer of shares shall be construed as including an offer by means of broadcasting, television or cinematograph; but, where an offer is made by means of broadcasting, television or cinematograph, the prospectus by which the offer is required to be accompanied by virtue of this section shall be deemed to accompany the offer if —

- (a) the prospectus is prepared by the person on whose behalf the offer is made;
- (b) the public is informed at the same time and by the same means as that by which the offer is made that a copy of the prospectus will be supplied on request being made at a specified address;
- (c) where request for a copy of a prospectus is made at that address within one month after the offer was made the person making the request is supplied with a copy within 7 days after the request was made; and
- (d) the offer contains no more information or matter than the information or matter referred to in section 48 (1) (a) to (f).

(11) For the purposes of subsection (1), a person shall not in relation to a corporation be regarded as not being a member of the public by reason only that he is a holder of shares in the corporation or a purchaser of goods from the corporation.

401.—(1) Every corporation which advertises, circulates or publishes any statement of the amount of its capital which is misleading or in which the amount of nominal or authorised capital is stated without the words “nominal” or “authorised”, or in which the amount of capital or authorised or subscribed capital is stated but the amount of paid-up capital or the amount of any charge on uncalled capital is not stated as prominently as the amount of authorised or subscribed capital is stated, and every officer of the corporation who knowingly authorises, directs or consents to such advertising, circulation or publication shall be guilty of an offence.

False and misleading statement.
U.K. s. 438.
Aust. s. 375.

(2) Every person who in any return, report, certificate, balance-sheet or other document required by or for the purposes of this Act wilfully makes or authorises the making of a statement false or misleading in any material particular knowing it to be false or misleading or wilfully omits or authorises the accession of any matter or thing without which the document is misleading in a material respect shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

62/70
15/84.

(3) For the purposes of subsection (2), where a person at a meeting votes in favour of the making of a statement referred to in that subsection he shall be deemed to have authorised the making of that statement.

62/70.

[364

402.—(1) An officer of a corporation who, with intent to deceive, makes or furnishes, or knowingly and wilfully authorises or permits the making or furnishing of, any false or misleading statement or report to —

False reports.
62/70
49/73
15/84.

- (a) a director, auditor, member, debenture holder or trustee for debenture holders of the corporation;
- (b) in the case of a corporation that is a subsidiary, an auditor of the holding company; or
- (c) a stock exchange in Singapore or elsewhere or an officer thereof or the Securities Industry Council,

relating to the affairs of the corporation, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) In subsection (1), “officer” includes a person who at any time has been an officer of the corporation. [364A

Dividends payable from profits only. Aust. s. 376.

403.—(1) No dividend shall be payable to the shareholders of any company except out of profits or pursuant to section 69.

15/84.

(2) Every director or manager of a company who wilfully pays or permits to be paid any dividend out of what he knows is not profits except pursuant to section 69 —

(a) shall, without prejudice to any other liability, be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months; and

(b) shall also be liable to the creditors of the company for the amount of the debts due by the company to them respectively to the extent by which the dividends so paid have exceeded the profits and such amount may be recovered by the creditors or the liquidator suing on behalf of the creditors.

(3) If the whole amount is recovered from one director or from the manager he may recover contribution against any other person liable who has directed or consented to such payment.

(4) No liability by this section imposed on any person shall on the death of such person extend or pass to his executors or administrators nor shall the estate of any such person after his decease be made liable under this section.

(5) In this section, “dividend” includes bonus and payment by way of bonus. [365

Fraudulently inducing persons to invest money.

404.—(1) Any person who, by any statement, promise or forecast which he knows to be misleading, false or deceptive or by any dishonest concealment of material facts or by the reckless making of any statement, promise or forecast which is misleading, false or deceptive, induces or attempts to induce another person to enter into or offer to enter into —

(a) any agreement for or with a view to acquiring, disposing of, subscribing in or underwriting marketable securities or lending or depositing money to or with any corporation; or

- (b) any agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of marketable securities or by reference to fluctuations in the value of marketable securities,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$30,000 or to imprisonment for a term not exceeding 7 years or to both.

(2) Any person guilty of conspiracy to commit any offence under subsection (1) shall be punishable as if he had committed such an offence. Conspiracy.

(3) Whoever, being an officer or agent of any corporation, by any deceitful means or false promise and with intent to defraud, causes or procures any money to be paid or any chattel or marketable security to be delivered to that corporation or to himself or any other person for the use or benefit or on account of that corporation shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 5 years or to both. Obtaining payment of moneys, etc., to company by false promise of director, member, etc., of company. 15/84.

(4) Upon the trial of a charge of an offence under this section, the opinion of any registered or public accountant as to the financial position of any company at any time or during any period in respect of which he has made an audit or examination of the affairs of the company according to recognised audit practice shall be admissible either for the prosecution or for the defence as evidence of the financial position of the company at that time or during that period, notwithstanding that the opinion is based in whole or in part on book-entries, documents or vouchers or on written or verbal statements by other persons. Evidence of financial position of company. [366]

405.—(1) Any person who —

- (a) carries on business as a corporation without having the corporation duly registered; or
- (b) uses or carries on business under any name of which “Limited” or “Berhad”, or any word or abbreviation with such meaning, is used without having a company duly incorporated or registered with limited liability,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

Penalty for carrying on business without registering a corporation and for improper use of words “Limited” and “Berhad”. 15/84.

Restriction
on the use of
word
“Private” or
“Sendirian”.

(2) A company shall not use the word “Private” or “Sendirian” or any abbreviation thereof as part of its name if it does not fulfil the requirements required by this Act to be fulfilled by private companies and every corporation and every officer of a corporation who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 and also to a default penalty. [367

Frauds by
officers.
U.K. s. 330.
Aust. s. 302.
15/84.

406. Every person who, while an officer of a company —

- (a) has by deceitful or fraudulent or dishonest means or by means of any other fraud induced any person to give credit to the company;
- (b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company; or
- (c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against the company,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 3 years or to both. [368

General
penalty pro-
visions.
Aust. s. 379.

407.—(1) A person who —

- (a) does that which under this Act he is forbidden to do;
- (b) does not do that which under this Act he is required or directed to do; or
- (c) otherwise contravenes or fails to comply with any provision of this Act,

shall be guilty of an offence.

15/84.

(2) A person who is guilty of an offence under this Act shall be liable on conviction to a penalty or punishment not exceeding the penalty or punishment expressly mentioned as the penalty or punishment for the offence, or if a penalty or punishment is not so mentioned, to a fine not exceeding \$1,000.

(3) Every summons issued for an offence committed by an officer of a company or other person under this Act or any regulations may, notwithstanding anything in this Act, be served — 15/84.

- (a) by delivering it to him;
- (b) by delivering it to any adult person residing at his last known place of abode or employed at his last known place of business; or
- (c) by forwarding it by registered post in a cover addressed to him at his last known place of abode or business or at any address furnished by him.

(4) In proving service by registered post, it shall be sufficient to prove that the registered cover containing the summons was duly addressed and posted. 15/84.
[369

408.—(1) Where a default penalty is provided in any section of this Act, any person who is convicted of an offence under this Act or who has been dealt with under section 409 (4) or (5) for an offence under this Act in relation to that section shall be guilty of a further offence under this Act if the offence continues after he is so convicted or after he has been so dealt with and liable to an additional penalty for each day during which the offence so continues of not more than the amount expressed in the section as the amount of the default penalty or, if an amount is not so expressed, of not more than \$200. Default penalties.
U.K. s. 440.
Aust. s. 380.
15/84.

(2) Where any offence is committed by a person by reason of his failure to comply with any provision of this Act under which he is required or directed to do anything within a particular period, that offence, for the purposes of subsection (1), shall be deemed to continue so long as the thing so required or directed to be done by him remains undone, notwithstanding that such period has elapsed.

(3) For the purposes of any provision of this Act which provides that an officer of a company or corporation who is in default is guilty of an offence under this Act or is liable to a penalty or punishment, the phrase “officer who is in default” or any like phrase means any officer of the company or corporation who knowingly and wilfully —

- (a) is guilty of the offence; or

(b) authorises or permits the commission of the offence. [370]

Proceedings
how and
when taken.
U.K. ss. 442,
445.
Aust. s. 381.

409.—(1) Except where provision is otherwise made in this Act, proceedings for any offence under this Act may be taken by the Registrar or with the written consent of the Minister by any person.

(2) Notwithstanding anything in any other Act, proceedings for any offence under this Act may be brought within the period of 3 years after the commission of the alleged offence or, with the consent of the Minister, at any later time.

(3) Proceedings for any offence under this Act, other than an offence punishable with imprisonment for a term exceeding 6 months, may be prosecuted in a Magistrate's Court and in the case of an offence punishable with imprisonment for a term of 6 months or more may be prosecuted in a District Court.

(4) The Registrar may, without instituting proceedings against any person for any offence under this Act or the regulations which is punishable only by a fine or a fine and a default penalty, demand and receive the amount of such fine or default penalty or such reduced amount as he thinks fit from that person, whereupon —

- (a) if that person pays the amount to the Registrar within 14 days after the demand, no proceedings shall be taken against him in relation to the offence; or
- (b) if that person does not so pay the amount so demanded, the Registrar may cause proceedings to be instituted in relation to the offence.

15/84.

(5) The powers conferred upon the Registrar under subsection (4) in relation to offences under this Act that are punishable by a fine or a fine and default penalty shall extend to an offence committed under section 201 (1) even though such offence is punishable under section 204 by a fine or imprisonment.

15/84.

(6) The power conferred upon the Registrar under subsection (4) shall only be exercised where the person admits the offence and agrees in writing to the offence being dealt with under that subsection.

(7) Any punishment authorised by this Act may be imposed by a District Court, notwithstanding that it is a greater punishment than that Court is otherwise empowered to impose.

(8) The Registrar and any officer authorised by him in writing shall have the right to appear and be heard before a Magistrate's Court or a District Court in any proceedings for an offence under this Act. 15/84.
[371]

Division 3 — Miscellaneous

410. The Rules Committee constituted under any law for the time being in force relating to the courts may, subject to and in accordance with the provisions of that law relating to the making of rules, make rules — Rules.
Aust. s. 383.

- (a) with respect to proceedings and the practice and procedure of the Court under this Act;
- (b) with respect to any matter or thing which is by this Act required or permitted to be prescribed by rules;
- (c) without limiting the generality of this section, with respect to Court fees and costs and with respect to rules as to meetings ordered by the Court; and
- (d) generally with respect to the winding up of companies. [372]

411. The Minister may make regulations for or with respect to — Regulations.
Aust. s. 384.
15/84.

- (a) the duties and functions of the Registrar, Deputy Registrars, Assistant Registrars and other persons appointed to assist with the administration of this Act;
- (b) the lodging or registration of documents and the time and manner of submission of documents for lodging or registration;
- (c) prescribing forms for the purposes of this Act;
- (d) prescribing fees, not in any case exceeding \$50, to be paid to the Registrar in respect of matters or things not provided for in the Second Schedule in respect of any document required to be lodged, filed, registered with or issued by the

- Registrar under this or any other Act or for any act required to be performed by the Registrar or for the inspection of any such document;
- (e) prescribing times for the lodging of any documents with the Registrar; and
 - (f) all matters or things which by this Act are required or permitted to be prescribed otherwise than by rules or which are necessary or expedient to be prescribed for giving effect to this Act. [373

Section 3 (1).

FIRST SCHEDULE

REPEALED WRITTEN LAWS

<i>Number in 1955 Edition</i>	<i>Short Title</i>	<i>Extent of Repeal</i>
Cap. 15	The Foreign Corporations (Execution of Instruments under Seal) Ordinance	The whole.
Cap. 174	The Companies Ordinance	The whole.
Cap. 277	The Companies (Special Provisions) Ordinance	The whole.

Sections 8
(11), 9 (2),
(3), 374 (1),
411.
S 215/84
S 263/86.

SECOND SCHEDULE

FEEs TO BE PAID TO THE REGISTRAR

By a company having a share capital

	\$	c.
1. For registration of a company whose nominal share capital does not exceed \$25,000	1,000	00
2. For registration of a company whose nominal share capital exceeds \$25,000 the above fee of \$1,000 with the following additional fees regulated according to the amount of nominal share capital (that is to say) —		
For every \$5,000 of nominal share capital or part of \$5,000 after the first \$25,000 up to \$500,000	20	00
For every \$5,000 of nominal share capital or part of \$5,000 after the first \$500,000 up to \$1,000,000	10	00

SECOND SCHEDULE — *continued*

	\$	c.
For every \$15,000 of nominal share capital or part of \$15,000 after the first \$1,000,000 up to \$50,000,000	5	00
For every \$20,000 of nominal share capital or part of \$20,000 after the first \$50,000,000	3	00
3. On lodging notice of increase of share capital — an amount equal to the difference (if any) between the amount which would have been payable under the Act on first registration by reference to its capital as increased and the amount which would have been payable under the Act by reference to its capital immediately before the increase:		
<p>Provided that no company shall be liable to pay in respect of nominal share capital on registration or thereafter any greater amount of fees than \$35,000 taking into account, in the case of fees payable on an increase of share capital after registration, the fees paid on registration</p>		
<i>By a company not having a share capital</i>		
4. For registration of a company whose number of members as stated in the articles of association does not exceed 20,	150	00
5. For registration of a company whose number of members as stated in the articles of association exceeds 20 but does not exceed 100 the additional fee of \$150 (with an additional \$5 for every 50 members or less than 50 members after the first 100) but no company shall be liable to pay on the whole a greater fee than \$600 in respect of its number of members taking into account the fee paid on the first registration of the company		

SECOND SCHEDULE — *continued*

	\$	c.
6. For registration of a company in which the number of members is stated in the articles of association to be unlimited	600	00
<i>Other fees</i>		
7. For every application for consent of the Minister to use of a name by a corporation	25	00
8. For every order of the Minister granting consent to use of a name by a corporation	50	00
9. For every approval of the Registrar to the change of the name of a company (otherwise than a change of name directed by the Registrar pursuant to section 28 (3) or a change of name pursuant to section 29 (2))	50	00
10. For perusing memorandum or articles of a company in connection with an application for a licence under section 29	100	00
11. For every licence of the Minister to dispense with the word "Berhad" or "Limited" in the name of a company	100	00
12. For an approval of the Minister to alter the memorandum or articles of a company	10	00
13. On lodgment of request to the Official Receiver to exercise the powers conferred by section 345 or 347	10	00
To be paid to Official Receiver		
14. For every act done by the Official Receiver as representing a defunct company under section 345	25	00
15. For every act done by the Official Receiver as representing a defunct company under section 347	25	00

SECOND SCHEDULE — *continued*

	\$	c.
16. On the late lodging of any document under this Act after the period prescribed by law, in addition to any other fee	100	00
The Registrar, if satisfied that just cause existed for the late lodgment may waive in whole or in part the additional fee.		
17. For the registration of a foreign company —		
(a) subject to paragraph (b), one-half of the appropriate fee prescribed in respect of a company registered or incorporated under Part III of the Act; and		
(b) where the fee prescribed in paragraph (a) is not applicable	600	00
18. On lodging by a foreign company of notice of increase in share capital or in the case of a foreign company not having a share capital on the lodging of notice of increase in number of members beyond its registered number — one-half of the prescribed fee payable on the increase in share capital or on the increase in the number of members of a company incorporated or registered under Part III of the Act		
19. For registering particulars of each series of debentures where more than one issue in the series	10	00
20. On an application for the approval and reservation of names — for each name applied for, whether or not approved and reserved	15	00
21. For granting extension of time for the reservation of a name for a further period after the first reservation	5	00
22. On lodging articles of association of a company	10	00

SECOND SCHEDULE — *continued*

	\$	c.
23. On lodging a copy of any special resolution, e.g., for altering the memorandum or articles of association of a company	10	00
24. On lodging any deed or copy of a deed under section 109 or on lodging any prospectus or statement in lieu of prospectus or statements required under section 113	25	00
25. For perusal of any prospectus, abridged or otherwise, any financial statement or accounts furnished in connection with any application for declaration as a prescribed corporation under section 44 (7) (b), any take-over document (excluding Part C statement in the Tenth Schedule) or any statement required pursuant to Division 6 of Part IV including any trust deed	1,200	00
26. For registering any charge created by a corporation	25	00
27. For registering particulars of a series of debentures created by a corporation	25	00
28. For registering any memorandum of satisfaction	10	00
29. On any subpoena served on the Registrar to produce any document in his custody		Government rates chargeable
30. On lodging any application under section 53 or 400	25	00
31. On lodging any application to the Registrar under section 200	50	00
32. On lodging any appeal against the decision of the Registrar under section 200	50	00

SECOND SCHEDULE — *continued*

	\$	c.
33. On lodging any other application	5	00
34. For every certificate issued by the Registrar under the Act or any other Act	10	00
35. For supplying diazo duplicates of the microfilm of the file of a company	5	00
36. For supplying a photographic or microprint copy of, or extract from, any document	\$1 00 for each page or part thereof	
37. For supplying and certifying a photographic or microprint copy of, or extract from, any document	\$2 00 for each page or part thereof	
38.—(1) For providing Instant Information Service:		
(a) by way of Electronic Services and Telecoms Telepac Services	\$3 00 for each company	
(b) other than by way of Electronic Services and Telecoms Telepac Services	\$5 00 for each company	
(2) Duration charges for the Electronic Services:		
Rate 1 — Logon	\$0 05 per block of 15 seconds or part thereof	
Rate 2 — Filing	\$0 05 per block of 15 seconds or part thereof	

SECOND SCHEDULE — *continued*

	\$	c.
Rate 3 — Information (Directory and Register of Companies)	\$0 25	per block of 15 seconds or part thereof
Rate 4 — Information (Listings and Statistical Information)	\$2 50	per block of 15 seconds or part thereof
39. For any information concerning a company supplied by the Registrar in reply to a written application	5	00
40. For every approval or renewal of approval of a company auditor or of a company liquidator granted by the Minister	25	00
41. On lodging any annual return of a company	20	00
42. On lodging, registering, depositing or filing any other document with or by the Registrar under any Act, where the fee is not specified in any relevant Act or regulations	10	00
Fees payable with respect to companies formed or incorporated outside Singapore shall where appropriate be calculated after the conversion of the share capital to Singapore currency		
43. For filing the first Memorial pursuant to any written law	150	00
44. For filing any subsequent Memorial on the appointment of a new or other Manager or on any change in or addition to the facts stated in the first Memorial	75	00

THIRD SCHEDULE

POWERS

Section 23
(1).
Aust. 3rd
Schedule.

1. To carry on any other business which may seem to the company capable of being conveniently carried on in connection with its business or calculated directly or indirectly to enhance the value of or render profitable any of the company's property or rights.

2. To acquire and undertake the whole or any part of the business, property, and liabilities of any person or company carrying on any business which the company is authorised to carry on, or possessed of property suitable for the purposes of the company.

3. To apply for, purchase, or otherwise acquire any patents, patent rights, copyrights, trade marks, formulas, licences, concessions, and the like, conferring any exclusive or non-exclusive or limited right to use, or any secret or other information as to, any invention which may seem capable of being used for any of the purposes of the company, or the acquisition of which may seem calculated directly or indirectly to benefit the company; and to use, exercise, develop, or grant licences in respect of, or otherwise turn to account, the property, rights, or information so acquired.

4. To amalgamate or enter into partnership or into any arrangement for sharing of profits, union of interest, co-operation, joint adventure, reciprocal concession, or otherwise, with any person or company carrying on or engaged in or about to carry on or engage in any business or transaction which the company is authorised to carry on or engage in, or any business or transaction capable of being conducted so as directly or indirectly to benefit the company.

5. To take, or otherwise acquire, and hold, shares, debentures, or other securities of any other company.

6. To enter into any arrangements with any Government or authority, supreme, municipal, local, or otherwise, that may seem conducive to the company's objects, or any of them; and to obtain from any such Government or authority any rights, privileges, and concessions which the company may think it desirable to obtain; and to carry out, exercise, and comply with any such arrangements, rights, privileges, and concessions.

7. To establish and support or aid in the establishment and support of associations, institutions, funds, trusts, and conveniences calculated to benefit employees or directors or past employees or directors of the company or of its predecessors in business, or the dependants or connections of any such persons; and to grant pensions and allowances, and to make payments towards insurance; and to subscribe or guarantee money for charitable or benevolent objects, or for any exhibition, or for any public, general, or useful object.

8. To promote any other company or companies for the purpose of acquiring or taking over all or any of the property, rights, and liabilities of the company, or for any other purpose which may seem directly or indirectly calculated to benefit the company.

THIRD SCHEDULE — *continued*

9. To purchase, take on lease or in exchange, hire, or otherwise acquire any movable or immovable property and any rights or privileges which the company may think necessary or convenient for the purposes of its business, and in particular any land, buildings, easements, machinery, plant, and stock in trade.

10. To construct, improve, maintain, develop, work, manage, carry out, or control any buildings, works, factories, mills, roads, ways, tramways, railways, branches or sidings, bridges, reservoirs, water-courses, wharves, warehouses, electric works, shops, stores, and other works and conveniences which may seem calculated directly or indirectly to advance the company's interests; and to contribute to, subsidise, or otherwise assist or take part in the construction, improvement, maintenance, development, working, management, carrying out, or control thereof.

11. To invest and deal with the money of the company not immediately required in such manner as may from time to time be thought fit.

12. To lend and advance money or give credit to any person or company; to guarantee and give guarantees or indemnities for the payment of money or the performance of contracts or obligations by any person or company; to secure or undertake in any way the repayment of moneys lent or advanced to or the liabilities incurred by any person or company; and otherwise to assist any person or company.

13. To borrow or raise or secure the payment of money in such manner as the company may think fit and to secure the same or the repayment or performance of any debt, liability, contract, guarantee or other engagement incurred or to be entered into by the company in any way and in particular by the issue of debentures perpetual or otherwise, charged upon all or any of the company's property (both present and future), including its uncalled capital; and to purchase, redeem, or pay off any such securities.

14. To remunerate any person or company for services rendered, or to be rendered, in placing or assisting to place or guaranteeing the placing of any of the shares in the company's capital or any debentures, or other securities of the company, or in or about the organisation, formation, or promotion of the company or the conduct of its business.

15. To draw, make, accept, endorse, discount, execute, and issue promissory notes, bills of exchange, bills of lading, and other negotiable or transferable instruments.

16. To sell or dispose of the undertaking of the company or any part thereof for such consideration as the company may think fit, and in particular for shares, debentures, or securities of any other company having objects altogether or in part similar to those of the company.

THIRD SCHEDULE — *continued*

17. To adopt such means of making known and advertising the business and products of the company as may seem expedient.

18. To apply for, secure, acquire by grant, legislative enactment, assignment, transfer, purchase, or otherwise, and to exercise, carry out, and enjoy any charter, licence, power, authority, franchise, concession, right, or privilege, which any Government or authority, or any corporation or other public body may be empowered to grant; and to pay for, aid in, and contribute towards carrying the same into effect; and to appropriate any of the company's shares, debentures, or other securities and assets to defray the necessary costs, charges, and expenses thereof.

19. To apply for, promote, and obtain any statute, order, regulation, or other authorisation or enactment which may seem calculated directly or indirectly to benefit the company; and to oppose any bills, proceedings, or applications which may seem calculated directly or indirectly to prejudice the company's interests.

20. To procure the company to be registered or recognised in any country or place outside Singapore.

21. To sell, improve, manage, develop, exchange, lease, dispose of, turn to account, or otherwise deal with all or any part of the property and rights of the company.

22. To issue and allot fully or partly paid shares in the capital of the company in payment or part payment of any movable or immovable property purchased or otherwise acquired by the company or any services rendered to the company.

23. To distribute any of the property of the company among the members in kind or otherwise but so that no distribution amounting to a reduction of capital shall be made without the sanction required by law.

24. To take or hold mortgages, liens, and charges to secure payment of the purchase price, or any unpaid balance of the purchase price, of any part of the company's property of whatsoever kind sold by the company, or any money due to the company from purchasers and others.

25. To carry out all or any of the objects of the company and do all or any of the above things in any part of the world and either as principal, agent, contractor, or trustee, or otherwise, and by or through trustees or agents or otherwise, and either alone or in conjunction with others.

26. To do all such other things as are incidental or conducive to the attainment of the objects and the exercise of the powers of the company.

Sections 3
(3), 36, 37
(3), 177 (4).
Aust. 4th
Schedule.

FOURTH SCHEDULE

TABLE A

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES

Interpretation

1. In these Regulations —
- Cap. 50 “the Act” means the Companies Act;
 “the seal” means the common seal of the company;
 “secretary” means any person appointed to perform the duties of
 a secretary of the company;
 expressions referring to writing shall, unless the contrary inten-
 tion appears, be construed as including references to
 printing, lithography, photography and other modes of
 representing or reproducing words in a visible form;
- Cap. 1. words or expressions contained in these Regulations shall be
 interpreted in accordance with the provisions of the Interpret-
 ation Act, and of the Act as in force at the date at which
 these Regulations become binding on the company.

Share capital and variation of rights

2. Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares but subject to the Act, shares in the company may be issued by the directors and any such shares may be issued with such preferred, deferred, or other special rights or such restrictions, whether in regard to dividend, voting, return of capital, or otherwise, as the directors, subject to any ordinary resolution of the company, determine.

3. Subject to the Act, any preference shares may, with the sanction of an ordinary resolution, be issued on the terms that they are, or at the option of the company are liable, to be redeemed.

4. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the company is being wound up, be varied with the consent in writing of the holders of 75% of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these Regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll. To every such special resolution section 184 shall with such adaptations as are necessary apply.

5. The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to

FOURTH SCHEDULE — *continued*

be varied by the creation or issue of further shares ranking equally therewith.

6. The company may exercise the powers of paying commissions conferred by the Act, provided that the rate per cent or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by the Act and the commission shall not exceed the rate of 10% of the price at which the shares in respect whereof the same is paid are issued or an amount equal to 10% of that price (as the case may be). Such commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in one way and partly in the other. The company may also on any issue of shares pay such brokerage as may be lawful.

7. Except as required by law, no person shall be recognised by the company as holding any share upon any trust, and the company shall not be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future, or partial interest in any share or unit of a share or (except only as by these Regulations or by law otherwise provided) any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.

8. Every person whose name is entered as a member in the register of members shall be entitled without payment to receive a certificate under the seal of the company in accordance with the Act but in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all such holders.

Lien

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

10. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless a sum in respect of which the lien exists is presently payable, nor until the expiration of 14 days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled thereto by reason of his death or bankruptcy.

FOURTH SCHEDULE — *continued*

11. To give effect to any such sale the directors may authorise some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer, and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

12. The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue, if any, shall (subject to a like lien for sums not presently payable as existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.

Calls on shares

13. The directors may from time to time make calls upon the members in respect of any money unpaid on their shares (whether on account of the nominal value of the shares or by way of premium) and not by the conditions of allotment thereof made payable at fixed times, provided that no call shall exceed 25% of the nominal value of the share or be payable at less than one month from the date fixed for the payment of the last preceding call, and each member shall (subject to receiving at least 14 days' notice specifying the time or times and place of payment) pay to the company at the time or times and place so specified the amount called on his shares. A call may be revoked or postponed as the directors may determine.

14. A call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed and may be required to be paid by instalments.

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

16. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment thereof to the time of actual payment at such rate not exceeding 8% per annum as the directors may determine, but the directors shall be at liberty to waive payment of that interest wholly or in part.

17. Any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date, whether on account of the nominal value of the share or by way of premium, shall for the purposes of these Regulations be deemed to be a call duly made and payable on the date on which by the terms of issue the same becomes payable, and in case of non-payment all the relevant provisions of these Regulations as to payment of interest and expenses, forfeiture, or otherwise shall apply as if the sum had become payable by virtue of a call duly made and notified.

FOURTH SCHEDULE — *continued*

18. The directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

19. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the money uncalled and unpaid upon any shares held by him, and upon all or any part of the money so advanced may (until the same would, but for the advance, become payable) pay interest at such rate not exceeding (unless the company in general meeting shall otherwise direct) 8% per annum as may be agreed upon between the directors and the member paying the sum in advance.

Transfer of shares

20. Subject to these Regulations any member may transfer all or any of his shares by instrument in writing in any usual or common form or in any other form which the directors may approve. The instrument shall be executed by or on behalf of the transferor and the transferor shall remain the holder of the shares transferred until the transfer is registered and the name of the transferee is entered in the register of members in respect thereof.

21. The instrument of transfer must be left for registration at the registered office of the company together with such fee, not exceeding \$1 as the directors from time to time may require, accompanied by the certificate of the shares to which it relates and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer, and thereupon the company shall subject to the powers vested in the directors by these Regulations register the transferee as a shareholder and retain the instrument of transfer.

22. The directors may decline to register any transfer of shares, not being fully paid shares to a person of whom they do not approve and may also decline to register any transfer of shares on which the company has a lien.

23. The registration of transfers may be suspended at such times and for such periods as the directors may from time to time determine not exceeding in the whole 30 days in any year.

Transmission of shares

24. In case of the death of a member the survivor or survivors where the deceased was a joint holder, and the legal personal representatives of the deceased where he was a sole holder, shall be the only persons recognised by the company as having any title to his interest in the shares; but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.

FOURTH SCHEDULE — *continued*

25. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such evidence being produced as may from time to time properly be required by the directors and subject as hereinafter provided, elect either to be registered himself as holder of the share or to have some person nominated by him registered as the transferee thereof, but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by that member before his death or bankruptcy.

26. If the person so becoming entitled elects to be registered himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects. If he elects to have another person registered he shall testify his election by executing to that person a transfer of the share. All the limitations, restrictions, and provisions of these Regulations relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as aforesaid as if the death or bankruptcy of the member had not occurred and the notice or transfer were a transfer signed by that member.

27. Where the registered holder of any share dies or becomes bankrupt his personal representative or the assignee of his estate, as the case may be, shall, upon the production of such evidence as may from time to time be properly required by the directors in that behalf, be entitled to the same dividends and other advantages, and to the same rights (whether in relation to meetings of the company, or to voting, or otherwise), as the registered holder would have been entitled to if he had not died or become bankrupt; and where two or more persons are jointly entitled to any share in consequence of the death of the registered holder they shall, for the purposes of these Regulations, be deemed to be joint holders of the share.

Forfeiture of shares

28. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of the call or instalment remains unpaid serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

29. The notice shall name a further day (not earlier than the expiration of 14 days from the date of service of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

30. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect. Such forfeiture shall include all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.

FOURTH SCHEDULE — *continued*

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

32. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all money which, at the date of forfeiture, was payable by him to the company in respect of the shares (together with interest at the rate of 8% per annum from the date of forfeiture on the money for the time being unpaid if the directors think fit to enforce payment of such interest), but his liability shall cease if any when the company receives payment in full of all such money in respect of the shares.

33. A statutory declaration in writing that the declarant is a director or the secretary of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share.

34. The company may receive the consideration, if any, given for a forfeited share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of and he shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale, or disposal of the share.

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

Conversion of shares into stock

36. The company may by ordinary resolution passed at a general meeting convert any paid-up shares into stock and reconvert any stock into paid-up shares of any denomination.

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

FOURTH SCHEDULE — *continued*

38. The holders of stock shall according to the amount of the stock held by them have the same rights, privileges and advantages as regards dividends voting at meetings of the company and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company and in the assets on winding up) shall be conferred by any such aliquot part of stock which would not if existing in shares have conferred that privilege or advantage.

39. Such of the regulations of the company as are applicable to paid-up shares shall apply to stock, and the words “share” and “shareholder” therein shall include “stock” and “stockholder”.

Alteration of capital

40. The company may from time to time by ordinary resolution —

- (a) increase the share capital by such sum to be divided into shares of such amount as the resolution shall prescribe;
- (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
- (c) 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;
- (d) 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 or which have been forfeited and diminish the amount of its share capital by the amount of the shares so cancelled.

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

FOURTH SCHEDULE — *continued*

42. The company may by special resolution reduce its share capital, any capital redemption reserve fund or any share premium account in any manner and with, and subject to, any incident authorised, and consent required by law.

General meetings

43. An annual general meeting of the company shall be held in accordance with the provisions of the Act. All general meetings other than the annual general meetings shall be called extraordinary general meetings.

44. Any director may, whenever he thinks fit, convene an extraordinary general meeting, and extraordinary general meetings shall be convened on such requisition or in default may be convened by such requisitionists as provided by the Act.

45. Subject to the provisions of the Act relating to special resolutions and agreements for shorter notice, 14 days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of meeting and in case of special business the general nature of that business shall be given to such persons as are entitled to receive such notices from the company.

46. All business shall be special that is transacted at an extraordinary general meeting, and also all that is transacted at an annual general meeting, with the exception of declaring a dividend, the consideration of the accounts, balance-sheets, and the report of the directors and auditors, the election of directors in the place of those retiring, and the appointment and fixing of the remuneration of the auditors.

Proceedings at general meetings

47. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business. Save as herein otherwise provided, two members present in person shall form a quorum. For the purposes of this regulation "member" includes a person attending as a proxy or as representing a corporation which is a member.

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

49. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act, the

FOURTH SCHEDULE — *continued*

members present shall elect one of their number to be chairman of the meeting.

50. The chairman may, with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Except as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

51. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded —

- (a) by the chairman;
- (b) by at least 3 members present in person or by proxy;
- (c) by any member or members present in person or by proxy and representing not less than 10% of the total voting rights of all the members having the right to vote at the meeting; or
- (d) by a member or members holding shares in the company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than 10% of the total sum paid up on all the shares conferring that right.

Unless a poll is so demanded a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. The demand for a poll may be withdrawn.

52. If a poll is duly demanded it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairman directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded, but a poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith.

53. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a second or casting vote.

54. Subject to any rights or restrictions for the time being attached to any class or classes of shares, at meetings of members or classes of members, each member entitled to vote may vote in person or by proxy or by attorney and on a show of hands every person present

FOURTH SCHEDULE — *continued*

who is a member or a representative of a member shall have one vote, and on a poll every member present in person or by proxy or by attorney or other duly authorised representative shall have one vote for each share he holds.

55. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

56. A member who is of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mental disorder may vote, whether on a show of hands or on a poll, by his committee or by such other person as properly has the management of his estate, and any such committee or other person may vote by proxy or attorney.

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

58. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

59. The instrument appointing a proxy shall be in writing, in the common or usual form, under the hand of the appointer or of his attorney duly authorised in writing or, if the appointer is a corporation, either under seal or under the hand of an officer or attorney duly authorised. A proxy may but need not be a member of the company. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

60. Where it is desired to afford members an opportunity of voting for or against a resolution the instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit:

I/We, _____, of _____ being a
 member/members of the abovenamed company, hereby appoint
 of _____, or failing him, _____ of _____,
 _____, as my/our proxy to vote for me/us on my/our behalf at
 the [annual or extraordinary, *as the case may be*] general meeting of
 the company, to be held on the _____ day of _____ 19____,
 and at any adjournment thereof.
 Signed this _____ day of _____ 19____.

This form is to be used $\frac{\text{*in favour of}}{\text{against}}$ the resolution.

*Strike out whichever is not desired. [Unless otherwise instructed, the proxy may vote as he thinks fit.]

FOURTH SCHEDULE — *continued*

61. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company, or at such other place in Singapore as is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.

62. A vote given in accordance with the terms of an instrument of proxy or attorney shall be valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument or of the authority under which the instrument was executed, or the transfer of the share in respect of which the instrument is given, if no intimation in writing of such death, unsoundness of mind, revocation, or transfer as aforesaid has been received by the company at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used.

Directors: Appointment, etc.

63. At the first annual general meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not 3 or a multiple of 3, then the number nearest one-third, shall retire from office.

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

65. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

66. The company at the meeting at which a director so retires may fill the vacated office by electing a person thereto, and in default the retiring director shall if offering himself for re-election and not being disqualified under the Act from holding office as a director be deemed to have been re-elected, unless at that meeting it is expressly resolved not to fill the vacated office or unless a resolution for the re-election of that director is put to the meeting and lost.

67. The company may from time to time by ordinary resolution passed at a general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

68. The directors shall have power at any time, and from time to time, to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in

FOURTH SCHEDULE — *continued*

accordance with these Regulations. Any director so appointed shall hold office only until the next following annual general meeting, and shall then be eligible for re-election but shall not be taken into account in determining the directors who are to retire by rotation at that meeting.

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

70. The remuneration of the directors shall from time to time be determined by the company in general meeting. That remuneration shall be deemed to accrue from day to day. The directors may also be paid all travelling, hotel, and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meetings of the company or in connection with the business of the company.

71. The shareholding qualification for directors may be fixed by the company in general meeting.

72. The office of director shall become vacant if the director —

- (a) ceases to be a director by virtue of the Act;
- (b) becomes bankrupt or makes any arrangement or composition with his creditors generally;
- (c) becomes prohibited from being a director by reason of any order made under the Act;
- (d) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental disorder;
- (e) resigns his office by notice in writing to the company;
- (f) for more than 6 months is absent without permission of the directors from meetings of the directors held during that period;
- (g) without the consent of the company in general meeting, holds any other office of profit under the company except that of managing director or manager; or
- (h) is directly or indirectly interested in any contract or proposed contract with the company and fails to declare the nature of his interest in manner required by the Act.

Powers and duties of directors

73. The business of the company shall be managed by the directors who may pay all expenses incurred in promoting and registering the company, and may exercise all such powers of the company as are not, by the Act or by these Regulations, required to be

FOURTH SCHEDULE — *continued*

exercised by the company in general meeting, subject, nevertheless, to any of these Regulations, to the provisions of the Act, and to such regulations, being not inconsistent with the aforesaid Regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

74. The directors may exercise all the powers of the company to borrow money and to mortgage or charge its undertaking, property, and uncalled capital, or any part thereof, and to issue debentures and other securities whether outright or as security for any debt, liability, or obligation of the company or of any third party.

75. The directors may exercise all the powers of the company in relation to any official seal for use outside Singapore and in relation to branch registers.

76. The directors may from time to time by power of attorney appoint any corporation, firm, or person or body of persons, whether nominated directly or indirectly by the directors, to be the attorney or attorneys of the company for such purposes and with such powers, authorities, and discretions (not exceeding those vested in or exercisable by the directors under these Regulations) and for such period and subject to such conditions as they may think fit, and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the directors may think fit and may also authorise any such attorney to delegate all or any of the powers, authorities, and discretions vested in him.

77. All cheques, promissory notes, drafts, bills of exchange, and other negotiable instruments, and all receipts for money paid to the company, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, by any two directors or in such other manner as the directors from time to time determine.

78. The directors shall cause minutes to be made —

- (a) of all appointments of officers to be engaged in the management of the company's affairs;
- (b) of names of directors present at all meetings of the company and of the directors; and
- (c) of all proceedings at all meetings of the company and of the directors.

Such minutes shall be signed by the chairman of the meeting at which the proceedings were held or by the chairman of the next succeeding meeting.

Proceedings of directors

79. The directors may meet together for the despatch of business adjourn and otherwise regulate their meetings as they think fit. A director may at any time and the secretary shall on the requisition of a director summon a meeting of the directors.

FOURTH SCHEDULE — *continued*

80. Subject to these Regulations, questions arising at any meeting of directors shall be decided by a majority of votes and a determination by a majority of directors shall for all purposes be deemed a determination of the directors. In case of an equality of votes the chairman of the meeting shall have a second or casting vote.

81. A director shall not vote in respect of any contract or proposed contract with the company in which he is interested, or any matter arising thereout, and if he does so vote his vote shall not be counted.

82. Any director with the approval of the directors may appoint any person, whether a member of the company or not, to be an alternate or substitute director in his place during such period as he thinks fit. Any person while he so holds office as an alternate or substitute director shall be entitled to notice of meetings of the directors and to attend and vote thereat accordingly, and to exercise all the powers of the appointor in his place. An alternate or substitute director shall not require any share qualification, and shall ipso facto vacate office if the appointor vacates office as a director or removes the appointee from office. Any appointment or removal under this regulation shall be effected by notice in writing under the hand of the director making the same.

83. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be two.

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

85. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within 10 minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be chairman of the meeting.

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

87. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within 10 minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chairman of the meeting.

FOURTH SCHEDULE — *continued*

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

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

90. A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more directors.

Managing directors

91. The directors may from time to time appoint one or more of their body to the office of managing director for such period and on such terms as they think fit and, subject to the terms of any agreement entered into in any particular case, may revoke any such appointment. A director so appointed shall not, while holding that office, be subject to retirement by rotation or be taken into account in determining the rotation of retirement of directors, but his appointment shall be automatically determined if he ceases from any cause to be a director.

92. A managing director shall, subject to the terms of any agreement entered into in any particular case, receive such remuneration, whether by way of salary, commission, or participation in profits, or partly in one way and partly in another, as the directors may determine.

93. The directors may entrust to and confer upon a managing director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit, and either collaterally with or to the exclusion of their own powers, and may from time to time revoke, withdraw, alter, or vary all or any of those powers.

Associate directors

94. The directors may from time to time appoint any person to be an associate director and may from time to time cancel any such appointment. The directors may fix, determine and vary the powers, duties and remuneration of any person so appointed, but a person so appointed shall not be required to hold any shares to qualify him for appointment nor have any right to attend or vote at any meeting of directors except by the invitation and with the consent of the directors.

FOURTH SCHEDULE — *continued**Secretary*

95. The secretary shall in accordance with the Act be appointed by the directors for such term, at such remuneration, and upon such conditions as they may think fit; and any secretary so appointed may be removed by them.

Seal

96. The directors shall provide for the safe custody of the seal, which shall only be used by the authority of the directors or of a committee of the directors authorised by the directors in that behalf, and every instrument to which the seal is affixed shall be signed by a director and shall be countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose.

Accounts

97. The directors shall cause proper accounting and other records to be kept and shall distribute copies of balance-sheets and other documents as required by the Act and shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting and other records of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or paper of the company except as conferred by statute or authorised by the directors or by the company in general meeting.

Dividends and reserves

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

99. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

100. No dividend shall be paid otherwise than out of profits or shall bear interest against the company.

101. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as reserves which shall, at the discretion of the directors, be applicable for any purpose to which the profits of the company may be properly applied, and pending any such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares in the company) as the directors may from time to time think fit. The directors may also without placing the same to reserve carry forward any profits which they may think prudent not to divide.

FOURTH SCHEDULE — *continued*

102. Subject to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect of which the dividend is paid, but no amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this regulation as paid on the share. All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid; but if any share is issued on terms providing that it shall rank for dividend as from a particular date that share shall rank for dividend accordingly.

103. The directors may deduct from any dividend payable to any member all sums of money, if any, presently payable by him to the company on account of calls or otherwise in relation to the shares of the company.

104. Any general meeting declaring a dividend or bonus may direct payment of such dividend or bonus wholly or partly by the distribution of specific assets and in particular of paid-up shares, debentures or debenture stock of any other company or in any one or more of such ways and the directors shall give effect to such resolution, and where any difficulty arises in regard to such distribution, the directors may settle the same as they think expedient, and fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any members upon the footing of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as may seem expedient to the directors.

105. Any dividend, interest, or other money payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the register of members or to such person and to such address as the holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any dividends, bonuses, or other money payable in respect of the shares held by them as joint holders.

Capitalisation of profits

106. The company in general meeting may upon the recommendation of the directors resolve that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the company's reserve accounts or to the credit of the profit and loss account or otherwise available for distribution, and accordingly that such sum be set free for distribution amongst the members who would have been entitled thereto if distributed by way of dividend and in the same proportions on condition that the same be not paid in cash but be applied either in or towards paying up any amounts for the time being

FOURTH SCHEDULE — *continued*

unpaid on any shares held by such members respectively or paying up in full unissued shares or debentures of the company to be allotted, distributed and credited as fully paid up to and amongst such members in the proportion aforesaid, or partly in the one way and partly in the other, and the directors shall give effect to such resolution. A share premium account and a capital redemption reserve may, for the purposes of this regulation, be applied only in the paying up of unissued shares to be issued to members of the company as fully paid bonus shares.

107. Whenever such a resolution as aforesaid shall have been passed the directors shall make all appropriations and applications of the undivided profits resolved to be capitalised thereby, and all allotments and issues of fully paid shares or debentures, if any, and generally shall do all acts and things required to give effect thereto, with full power to the directors to make such provision by the issue of fractional certificates or by payment in cash or otherwise as they think fit for the case of shares or debentures becoming distributable in fractions, and also to authorise any person to enter on behalf of all the members entitled thereto into an agreement with the company providing for the allotment to them respectively, credited as fully paid up, of any further shares or debentures to which they may be entitled upon such capitalisation, or, as the case may require, for the payment up by the company on their behalf, by the application thereto of their respective proportions of the profits resolved to be capitalised, of the amounts or any part of the amounts remaining unpaid on their existing shares, and any agreement made under such authority shall be effective and binding on all such members.

Notices

108. A notice may be given by the company to any member either personally or by sending it by post to him at his registered address, or, if he has no registered address in Singapore, to the address, if any, in Singapore supplied by him to the company for the giving of notices to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting on the day after the date of its posting, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

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

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

FOURTH SCHEDULE — *continued*

so entitled, or, until such an address has been so supplied, by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

111.—(1) Notice of every general meeting shall be given in any manner hereinbefore authorised to —

- (a) every member;
- (b) every person entitled to a share in consequence of the death or bankruptcy of a member who, but for his death or bankruptcy, would be entitled to receive notice of the meeting; and
- (c) the auditor for the time being of the company.

(2) No other person shall be entitled to receive notices of general meetings.

Winding up

112. If the company is wound up, the liquidator may, with the sanction of a special resolution of the company, divide amongst the members in kind the whole or any part of the assets of the company, whether they consist of property of the same kind or not, and may for that purpose set such value as he considers fair upon any property to be divided as aforesaid and may determine how the division shall be carried out as between the members or different classes of members. The liquidator may, with the like sanction, vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the contributories as the liquidator, with the like sanction, thinks fit, but so that no member shall be compelled to accept any shares or other securities whereon there is any liability.

Indemnity

113. Every director, managing director, agent, auditor, secretary, and other officer for the time being of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under the Act in which relief is granted to him by the Court in respect of any negligence, default, breach of duty or breach of trust.

FIFTH SCHEDULE

PROSPECTUS

PART I

Matters to be stated

Sections 44
(4), (5), 45
(1), (2), (6),
(8), 49 (2).
U.K. 4th
Schedule.
Aust. 5th
Schedule.
15/84.

1. The number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders of those shares in the property and profits of the company.

2. The number of shares, if any, fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors.

3. The names, descriptions, and addresses of all the directors or proposed directors except in the case of the directors of an issuing corporation that is a prescribed corporation under section 97 (8), only the city or locality of the residence of the directors need be given.

4. Where the prospectus relates to shares particulars as to —

(a) the minimum amount which, in the opinion of the directors, must be raised by the issue of those shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of —

(i) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;

(ii) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company;

(iii) the repayment of any money borrowed by the company in respect of any of the foregoing matters; and

(iv) working capital; and

(b) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.

5. The nature of the company's business and the names of all corporations which are by virtue of section 6 of the Act deemed to be related to the company.

6. The time of the opening of the subscription lists.

7. The amount payable on application and allotment on each share or where such amount may vary during the currency of the offer, the basis of calculation of the amount so payable and, in the case of a second or subsequent offer of shares, the number, description and amount offered for subscription on each previous allotment made within

FIFTH SCHEDULE — *continued*

the two preceding years, the number actually allotted, and the amount, if any, paid on the shares so allotted.

8. The number, description, and amount of any shares in or debentures of the company which any person has, or is entitled to be given, an option to subscribe for, together with the following particulars of the option:

- (a) the period during which it is exercisable;
- (b) the price to be paid for shares or debentures subscribed for under it;
- (c) the consideration, if any, given or to be given for it or for the right to it;
- (d) the names and addresses of the persons to whom it or the right to it was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures.

9. The number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued.

10.—(1) With respect to any property to which this paragraph applies —

- (a) the names and addresses of the vendors;
- (b) the amount payable in cash, shares, or debentures to the vendor and, where there is more than one separate vendor, or the corporation is a sub-purchaser, the amount so payable to each vendor;
- (c) short particulars of any transaction relating to the property completed within the two preceding years in which any vendor of the property to the corporation or any person who is, or was at the time of the transaction, a promoter or a director or proposed director of the corporation had any interest direct or indirect.

(2) The property to which this paragraph applies is property purchased or acquired by the corporation or by any subsidiary of the corporation or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus or the purchase or acquisition of which has not been completed at the date of the issue of the prospectus, other than property the contract for the purchase or acquisition whereof was entered into in the ordinary course of the corporation's or the subsidiary's business, the contract not being made in contemplation of the issue nor the issue in consequence of the contract.

FIFTH SCHEDULE — *continued*

11. The amount, if any, paid or payable as purchase money in cash, shares, or debentures for any property to which paragraph 10 applies, specifying the amount, if any, payable for goodwill.

12. The amount, if any, paid within the two preceding years, or payable, as commission (but not including commission to sub-underwriters) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in or debentures of the corporation, or the rate of any such commission, and the names of any directors or promoters or experts or proposed directors who are entitled to receive any such commission and the amount or rate thereof.

13. The amount or estimated amount of preliminary expenses and the persons by whom any of these expenses have been paid or are payable, and the amount or estimated amount of the expenses of the issue and the persons by whom any of those expenses have been paid or are payable.

14. Any amount or benefit paid or given within the two preceding years or intended to be paid or given to any promoter, and the consideration for the payment or the giving of the benefit.

15. The date of, parties to, and general nature of every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the corporation or a contract entered into more than two years before the date of issue of the prospectus.

16. The names and addresses of the auditors of the corporation.

17. Full particulars of the nature and extent of the interest, direct or indirect, if any, of every director and of every expert in the promotion of, or in the property proposed to be acquired by, the corporation, or, where the interest of such a director or such an expert consists in being a partner in a firm or a holder of shares or debentures in a corporation the nature and extent of the interest of the firm, or corporation and where the interest of such a director or such an expert consists in a holding of shares or debentures in a corporation a statement of the nature and extent of the interest of the director or expert in the corporation, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person in the case of a director either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm or corporation in connection with the promotion or formation of the corporation or (in the case of an expert) for services rendered by him or the firm or corporation in connection with the promotion or formation of the corporation. For the purposes of this paragraph, a director or expert shall be deemed to have an indirect interest in a corporation if he has any beneficial interest in shares or debentures of a corporation which has an interest in the promotion of, or in the property proposed to be acquired by the corporation or if he has any beneficial interest in shares or debentures in a corporation which is by virtue of section 6 deemed to be related to that first-mentioned corporation.

FIFTH SCHEDULE — *continued*

18. Where the prospectus relates to shares, if the share capital of the corporation is divided into different classes of shares, the right of voting at meetings of the corporation conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

19. In the case of a corporation which has been carrying on business, or of a business which has been carried on, for less than 3 years, the length of time during which the business of the corporation or the business to be acquired, as the case may be, has been carried on.

PART II

Reports to be set out

20.—(1) A report by an approved company auditor, who shall be named in the prospectus with respect to —

- (a) profits and losses and assets and liabilities of the corporation and of any guarantor corporation referred to in the prospectus, in accordance with sub-paragraph (2) or (3), as the case requires; and
- (b) the rates of the dividends, if any, paid by the corporation in respect of each class of shares in respect of each of the 5 financial years immediately preceding the issue of the prospectus, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years,

and, if no accounts have been made up in respect of any part of the period of 5 years ending on a date 3 months before the issue of the prospectus, containing a statement of that fact.

(2) If the corporation or the guarantor corporations have no subsidiaries, the report shall —

- (a) so far as regards profits and losses, deal with the profits or losses of the corporation and of the guarantor corporations referred to in the prospectus in respect of each of the 5 financial years immediately preceding the last date to which the accounts of the corporation or the guarantor corporations were made up;
- (b) so far as regards assets and liabilities, deal with the assets and liabilities of the corporation and of the guarantor corporations referred to in the prospectus at the last date to which the accounts of the corporation and the guarantor corporations were made up,

which date shall in no case be more than 9 months (or if the Registrar having regard to the circumstances of any particular case consents thereto in writing, 12 months) before the issue of the prospectus.

FIFTH SCHEDULE — *continued*

(3) If the corporation or the guarantor corporations have subsidiaries, the report shall —

(a) so far as regards profits and losses —

(i) deal as aforesaid separately with the corporation's and the guarantor corporations' (other than subsidiaries) profits or losses as provided by sub-paragraph (2) and in addition deal as aforesaid either —

(A) as a whole with the combined profits or losses of their subsidiaries; or

(B) individually with the profits or losses of each subsidiary; or

(ii) deal as aforesaid as a whole with the profits or losses of the corporation and of the guarantor corporations and with the combined profits or losses of their subsidiaries; and

(b) so far as regards assets and liabilities, deal as aforesaid separately with the corporation's and the guarantor corporations' (other than subsidiaries) assets and liabilities as provided by sub-paragraph (2) and in addition deal as aforesaid either —

(i) as a whole with the combined assets and liabilities of its or their subsidiaries, with or without the corporation's assets and liabilities; or

(ii) individually with the assets and liabilities of each subsidiary,

and shall indicate as respects the profits or losses and assets and liabilities of the subsidiaries the allowance to be made for persons other than members of the corporation.

(4) If the prospectus relates to shares in or debentures of the borrowing corporation the report shall state separately estimates of the amounts of moneys owing and payable to the corporation and the amounts of all liabilities payable by the borrowing corporation —

(a) not later than two years;

(b) later than two years but **not later** than 5 years; and

(c) later than 5 years,

calculated from the last date to which **the** accounts of the borrowing corporation were made up.

21. If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are to be applied directly or indirectly in the purchase of any business, a report by an approved company auditor (who shall be named in the prospectus) with respect to —

(a) the profits or losses of the business in respect of each of the 5 financial years immediately preceding the last date to which the accounts of the business were made up; and

FIFTH SCHEDULE — *continued*

(b) the assets and liabilities of the business at the last date to which the accounts of the business were made up, which date shall in no case be more than 6 months before the issue of the prospectus.

22.—(1) If —

(a) the proceeds, or any part of the proceeds, of the issue of the shares or debentures are to be applied directly or indirectly in any manner resulting in the acquisition by the corporation of shares in any other corporation; and
 (b) by reason of that acquisition or anything to be done in consequence thereof or in connection therewith that corporation will become a subsidiary of the corporation,
 a report by an approved company auditor (who shall be named in the prospectus) with respect to —

(c) the profits or losses of the other corporation in respect of each of the 5 financial years immediately preceding the last date to which the accounts of the corporation were made up; and

(d) the assets and liabilities of the other corporation at the last date to which the accounts of the corporation were made up,

which date shall in no case be more than 6 months before the issue of the prospectus.

(2) The report shall —

(a) indicate how the profits or losses of the other corporation dealt with by the report would, in respect of the shares to be acquired, have concerned members of the corporation and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the corporation had at all material times held the shares to be acquired; and

(b) where the other corporation has subsidiaries, deal with the profits or losses and the assets and liabilities of the corporation and its subsidiaries in the manner provided by paragraph 20 (3) in relation to the corporation and its subsidiaries.

23. A report by the directors as to whether after due inquiry by them in relation to the interval between the date to which the last accounts have been made up and a date not earlier than 14 days before the issue of the prospectus —

(a) the business of the corporation and its subsidiaries has in their opinion been satisfactorily maintained;

(b) there have in their opinion arisen since the last annual general meeting of the corporation any circumstances adversely affecting the trading or the value of the assets of the corporation or any of its subsidiaries;

FIFTH SCHEDULE — *continued*

- (c) the current assets of the corporation and of its subsidiaries appear in the books at values which are believed to be realisable in the ordinary course of business;
 - (d) there are any contingent liabilities by reason of any guarantees given by the corporation or any of its subsidiaries; or
 - (e) there are, since the last annual report, any changes in published reserves or any unusual factors affecting the profit of the corporation and its subsidiaries,
- and where any report is required pursuant to this paragraph it shall contain full details of all matters required to be dealt with in the report.

PART III

Provisions applying to Parts I and II of this Schedule

24. Paragraphs 2, 13 (so far as they relate to preliminary expenses), and 17 shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

25. Every person shall, for the purposes of this Schedule, be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the corporation in any case where —

- (a) the purchase money is not fully paid at the date of the issue of the prospectus;
- (b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or
- (c) the contract depends for its validity or fulfilment on the result of that issue.

26. Where any property to be acquired by the corporation is to be taken on lease this Schedule shall have effect as if the expression “vendor” included the lessor, and the expression “purchase money” included the consideration for the lease, and the expression “sub-purchaser” included a sub-lessee.

27. References in paragraph 8 to an option to subscribe for shares or debentures shall include an option to acquire them from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale, but shall not include an option to subscribe for or acquire shares pursuant to a bona fide underwriting or sub-underwriting agreement.

28. For the purposes of paragraph 10 where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors.

29. If in the case of a corporation which has been carrying on business, or of a business which has been carried on, for less than

FIFTH SCHEDULE — *continued*

5 years, the accounts of the corporation or business have only been made up in respect of 4 years, 3 years, 2 years, or one year, Part II of this Schedule shall have effect as if references to 4 years, 3 years, 2 years or one year, as the case may be, were substituted for references to 5 years.

30. The expression “financial year” in Part II of this Schedule means the year in respect of which the accounts of the corporation or of the business, as the case may be, are made up, and where by reason of any alteration of the date on which the financial year of the corporation or business terminates the accounts of the corporation or business have been made up for a period greater or less than a year, that greater or less period shall for the purposes of that Part of this Schedule be deemed to be a financial year.

31. Any report required by Part II of this Schedule shall either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary or shall make those adjustments and indicate that adjustments have been made.

PART IV

Additional matters to be included in prospectus relating to invitation to the public to deposit money with or lend money to a corporation

32. Where section 44 (4) of the Act applies there shall be included —

- (a) a statement to the effect that the repayment of all moneys that have been or may be deposited with or lent to the corporation in response to the invitation is secured by a first charge given to the trustee for the holders of the debentures to be issued in relation to the deposit or loan over land vested in the corporation or in any of its guarantor corporations and that the charge has been duly registered, or is a registrable mortgage which has been lodged for registration, in accordance with the law relating to the registration of land charges in the place where the land is situated and that the aggregate amount of such moneys and of all other liabilities, if any, secured by the charge over that land ranking *pari passu* with the liability to repay such moneys does not exceed 60% of the value of the corporation's interest in that land as shown in the valuation included in the prospectus; and
- (b) a copy of a written valuation of the corporation's interest in the land, so mortgaged, showing the nature and extent of the corporation's interest made not more than 6 months before the date of the prospectus by a person competent and qualified to make the valuation in the place where the land is situated who is not an officer or employee of the corporation or of any of its guarantor corporations or of

FIFTH SCHEDULE — *continued*

any corporation that by virtue of section 6 of the Act is deemed to be related to either the first-mentioned corporation or any of its guarantor corporations.

33.—(1) Where section 44 (5) of the Act applies there shall be included —

(a) a statement to the effect —

- (i) that the repayment of all moneys that have been or may be deposited with or lent to the corporation in response to the invitation has been secured by a charge in favour of the trustee for the holders of the debentures over the whole or any part of the tangible assets of the corporation and of its guarantor corporations or of any of them; and
- (ii) that having regard to the particulars in the summary made in accordance with sub-paragraph (1) (b) the tangible assets secured by the charge are sufficient and are reasonably likely to be sufficient to meet the liability for the repayment of all such moneys and all other liabilities ranking in priority thereto or *pari passu* therewith that have been or may be incurred; and

(b) a summary made by the approved company auditor who has made for inclusion in the prospectus the report required by Part II of this Schedule with respect to the assets and liabilities of the borrowing corporation showing in tabular form the aggregate values (based upon the amounts as disclosed in the statements of the assets and liabilities of the borrowing corporation and its guarantor corporations which have been prepared for the purposes of paragraphs 20 and 31) of the tangible assets of the borrowing corporation and of its guarantor corporations which have been charged to secure the repayment of all moneys referred to in sub-paragraph (1) (a) (i), after making such adjustments as are proper to give a true and fair view of the tangible assets available as security for the charge and, in particular, after making adjustments —

- (i) to exclude from those aggregate values such part of the value of any shares in or advances to a corporation as is reflected in or depends upon the tangible assets of that corporation which are otherwise included in the summary;
- (ii) to exclude from those aggregate values such part of the value of any shares in a corporation which is by virtue of section 6 of the Act deemed to be related to the borrowing corporation or the guarantor corporation, as the case requires, as is properly attributable to intangible assets of that first-mentioned corporation; and

FIFTH SCHEDULE — *continued*

- (iii) to add to those aggregate values the amount to be raised under the prospectus including the maximum amount of over-subscriptions which the prospectus in accordance with section 49 of the Act specifies may be retained.
- (2) In such summary the approved company auditor —
- (a) shall show the amounts outstanding out of the aggregate amounts borrowed respectively by the borrowing corporation and by its guarantor corporations distinguishing between those which will rank for repayment in priority to the proposed issue and those which will rank *pari passu* with that proposed issue;
 - (b) shall state by way of note or otherwise the total amount of the values of intangible assets excluded in making the adjustments required under sub-paragraph (1) (b) (ii);
 - (c) may, where a corporation has given a charge over its assets to secure a liability the amount of which may vary from time to time, take into account the actual amount of the liability as at the date at which the summary is made up but (in that event) shall show by way of note the further amount which may be advanced under that charge;
 - (d) may explain or qualify by way of note or otherwise any of the matters set out in the summary;
 - (e) shall disclose by way of note or otherwise the amount of advances by the borrowing corporation to any corporation which is by virtue of section 6 of the Act deemed to be related to the borrowing corporation distinguishing between advances which are secured and advances which are unsecured.
34. In every prospectus which relates to debentures there shall be included —
- (a) particulars of the limitations on the amount that the corporation may borrow;
 - (b) a statement as to the amount of subscriptions that are being sought;
 - (c) a statement as to whether or not the corporation reserves the right to accept or retain over-subscriptions and, if the corporation reserves such a right, the limit on the right so reserved expressed as a sum of money;
 - (d) where applicable, a statement as to whether or not the corporation has any right to create additional charges over any of the assets charged to secure the repayment of the deposits or loans which will rank in priority to or *pari passu* with that charge and if there is such a right particulars of its nature and extent.

FIFTH SCHEDULE — *continued*

PART V

Section 47.

Particulars to be included in an abridged prospectus relating to a renounceable rights issue where an application is being made for the shares in or debentures of a corporation to be quoted on or dealt in on any stock exchange

1. The date of the prospectus.
2. The following statements shall be made by the corporation:

“THIS DOCUMENT IS IMPORTANT” (*to be in bold or coloured print*).

“If you are in any doubt as to the action you should take, you should consult your stockbroker, bank manager, solicitor, accountant, or other professional adviser immediately.” (*to be in bold or coloured print*).

“Copies of this document, together with copies of the provisional allotment letter and excess share application form, have been lodged with and registered by the Registrar in Singapore who takes no responsibility for the contents of the documents.”

“Approval in principle has been obtained from the stock exchange for this rights issue and to deal in and for quotation for all the new securities arising from this issue and such new securities will be admitted to the official list of the stock exchange and official quotation will commence after all stock certificates have been issued.”

“All the documentation relating to this issue has been seen and approved by the directors of the corporation and they collectively and individually accept full responsibility for the accuracy of the information given and confirm that after making all reasonable enquiries to the best of their knowledge and belief there are no other factors the omission of which would make any statement in these documents misleading.”

3. Name of the corporation and its country of incorporation.
4. Particulars of the rights issue.
5. Names of the underwriters to the issue.
6. (a) The last day and time for splitting;
(b) The last day and time for acceptance and payment;
(c) The last day and time for renunciation and payment.

Note: PARAGRAPHS 1 TO 6 MUST BE INCORPORATED IN THE FRONT PAGE OF THE ABRIDGED PROSPECTUS.

7. The registered office of the corporation.
8. The full name, address and occupation of all the directors.

FIFTH SCHEDULE — *continued*

9. The names and addresses of the bankers, solicitors, auditors and registrars.

10. Terms and conditions of the issue — where listing is sought for shares which will not be identical with shares already listed —

- (a) a statement of the rights as regards dividends, capital redemption and voting attached to such shares and as to the right of the corporation to create or issue further shares to rank in priority to or rank *pari passu* therewith; and
- (b) a summary of the consents necessary for the creation of such rights.

11. Reasons and purpose of the issue — this should include a statement or an estimate of the net proceeds of the issue and a statement as to how the proceeds are intended to be applied.

12. The profits, prospects and dividends of the group — there should be disclosed, subject to paragraph 29, the following:

- (a) a tabulation for each of the last 5 financial years in the following format:

Year ended	Profit before tax	Profit after tax	Exceptional items	Gross earnings per share	Gross rate of dividend
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- (b) a statement as to the financial and trading prospects of the corporation or group, together with any material information which will be relevant thereto, including all special trade factors or risks (if any) which are not mentioned elsewhere in the prospectus and which are unlikely to be known or anticipated by the general public and which could materially affect the profits; and
- (c) a statement by the directors that in their opinion the working capital available is sufficient, or, if not, how it is proposed to provide the additional working capital thought by the directors to be necessary.

13.—(1) Where the date of registration of the prospectus for a rights issue is within 6 months of the last audited accounts, the last audited accounts shall be disclosed in the prospectus.

(2) Where the date of registration of the prospectus for a rights issue is more than 6 months, but less than 12 months of the last audited accounts, the last audited accounts, together with the half-year interim unaudited profits, shall be included in the prospectus.

(3) No prospectus shall contain audited accounts made up to a date which is more than 12 months to the date of registration of the prospectus.

14. A table or statement indicating —

- (a) the net asset backing per share of the corporation and the group as at the date of the last audited accounts; and
- (b) the effect of the rights issue on the net asset backing per share.

SIXTH SCHEDULE

STATEMENT IN LIEU OF PROSPECTUS

PART I

Statement in Lieu of Prospectus Lodged for Registration by
 [Insert name of the company]

Section 60
 (1).
 U.K. 3rd
 and 5th
 Schedules.
 Aust. 6th
 Schedule.

The nominal share capital of the company \$ Shares of \$ each: \$

Divided into Shares of \$ each: \$

Shares of \$ each: \$

Amount (if any) of above capital which consists of redeemable preference shares Shares of \$ each: \$

The date on or before which these shares are, or are liable, to be redeemed

Names, descriptions, and addresses of directors or proposed directors

If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively

Number and amount of shares and debentures issued within the two years preceding the date of this statement or proposed or agreed to be issued as fully or partly paid up otherwise than in cash

1. shares of \$ fully paid
2. shares upon which \$ per share credited as paid
3. debentures \$

The consideration for the issue or intended issue of those shares and debentures

4. Consideration:

Number, description, and amount of any shares or debentures which any person has or is entitled to be given an option to subscribe for, or to acquire from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale

1. shares of \$ and debentures of \$

Period during which option is exercisable

2. Until

Price to be paid for shares or debentures subscribed for or acquired under option

3. \$

SIXTH SCHEDULE — *continued*

- Consideration for option or right to option 4. Consideration:
 Persons to whom option or right to option was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures 5. Names and addresses:

Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the company except where the contract for its purchase or acquisition was entered into in the ordinary course of the business intended to be carried on by the company or the amount of the purchase money is not material

Amount (in cash, shares or debentures) payable to each separate vendor

Amount (if any) paid or payable (in cash, shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill

Total purchase price	\$	<hr/>
Cash	... \$	
Shares	... \$	
Debentures	... \$	<hr/>
Goodwill	... \$	<hr/>

Short particulars of any transaction relating to any such property which was completed within the two preceding years and in which any vendor to the company or any person who is, or was at the time thereof, a promoter, director, or proposed director of the company had any interest direct or indirect

Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company; or

Amount paid: \$
 Amount payable: \$

Rate of the commission per cent

Amount or rate of brokerage

The number of shares, if any, which persons have agreed for a commission to subscribe absolutely

SIXTH SCHEDULE — *continued*

Amount or estimated amount of preliminary expenses	\$
By whom those expenses have been paid or are payable	
Amount paid or intended to be paid to any promoter	Name of promoter: Amount: \$
Consideration for the payment	Consideration:
Any other benefit given or intended to be given to any promoter	Name of promoter: Nature and value of benefit:
Consideration for giving of benefit	Consideration:
Dates of, parties to, and general nature of every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than two years before the delivery of this statement)	
Time and place at which the contracts or copies thereof or (1) in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, and (2) in the case of a contract wholly or partly in a language other than English, a copy of a certified translation thereof in English or embodying a translation in English of the parts in a language other than English as the case may be, may be inspected	
Names and addresses of the auditors of the company	
Full particulars of the nature and extent of the interest, direct or indirect, of every director, and of every expert, in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director or expert consists in being a partner in a firm or a holder of shares or debentures in a corporation, the nature and extent of the interest of the firm or corporation and where the interest of such a director or such an expert consists in a holding of shares or	

SIXTH SCHEDULE — *continued*

debentures in a corporation, a statement of the nature and extent of the interest of the director or expert in the corporation, with a statement of all sums paid or agreed to be paid to him or to the firm or corporation in cash or shares, or otherwise, by any person (in the case of a director) either to induce him to become, or to qualify him as a director or otherwise for service rendered by him or by the firm or corporation in connection with the promotion or formation of the company (in the case of an expert) for services rendered by him or the firm or corporation in connection with the promotion or formation of the company. For the purposes of this paragraph a director or expert shall be deemed to have an indirect interest in a corporation if he has any beneficial interest in shares or debentures of a corporation which has an interest in the promotion of, or in the property proposed to be acquired by the company or if he has a beneficial interest in shares or debentures in a corporation which is by virtue of section 6 of the Act deemed to be related to that first-mentioned corporation

And also, in the case of a statement to be lodged by a private company on becoming a public company, the following items:

Rates of the dividends, if any, paid by the company in respect of each class of shares in the company in each of the 5 financial years immediately preceding the date of this statement or since the incorporation of the company, whichever period is the shorter

Particulars of the cases in which no dividends have been paid in respect of any class of shares in any of these years.

SIXTH SCHEDULE — *continued*

PART II

Reports to be set out

1. Where it is proposed to acquire a business, a report by an approved company auditor (who shall be named in the statement) with respect to —

- (a) the profits or losses of the business in respect of each of the 5 financial years immediately preceding the lodging of the statement with the Registrar; and
- (b) the assets and liabilities of the business at the last date to which the accounts of the business were made up.

2.—(1) Where it is proposed to acquire shares in a corporation which by reason of the acquisition or anything to be done in consequence thereof or in connection therewith will become a subsidiary of the company, a report by an approved company auditor (who shall be named in the statement) with respect to the profits and losses and assets and liabilities of the other corporation in accordance with sub-paragraph (2) or (3), as the case requires, indicating how the profits and losses of the other corporation dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company, and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired.

(2) If the other corporation has no subsidiaries, the report referred to in sub-paragraph (1) shall —

- (a) so far as regards profits and losses, deal with the profits or losses of the other corporation in respect of each of the 5 financial years immediately preceding the delivery of the statement to the Registrar; and
- (b) so far as regards assets and liabilities, deal with the assets and liabilities of the other corporation at the last date to which the accounts of the corporation were made up.

(3) If the other corporation has subsidiaries, the report referred to in sub-paragraph (1) shall —

- (a) so far as regards profits and losses, deal separately with the other corporation's profits or losses as provided by sub-paragraph (2), and in addition deal as aforesaid either —
 - (i) as a whole with the combined profits or losses of its subsidiaries; or
 - (ii) individually with the profits or losses of each subsidiary,

or, instead of dealing separately with the other corporation's profits or losses, deal as aforesaid as a whole with the profits or losses of the other corporation and with the combined profits or losses of its subsidiaries; and

SIXTH SCHEDULE — *continued*

(b) so far as regards assets and liabilities, deal separately with the other corporation's assets and liabilities as provided by sub-paragraph (2), and, in addition, deal as aforesaid either —

- (i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the other corporation's assets and liabilities; or
- (ii) individually with the assets and liabilities of each subsidiary,

and shall indicate as respects the profits or losses and the assets and liabilities of the subsidiaries the allowance to be made for persons other than members of the company.

Note.—Where a company is not required to furnish any of the reports referred to in this Part, a statement to that effect giving the reasons therefor should be furnished.

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

Date:

PART III

Provisions applying to Parts I and II of this Schedule

3. In this Schedule “vendor” includes any person who is a vendor for the purposes of the Fifth Schedule, and “financial year” has the meaning assigned to it in Part III of that Schedule.

4. If in the case of a business which has been carried on, or of a corporation which has been carrying on business, for less than 5 years, the accounts of the business or corporation have only been made up in respect of 4 years, 3 years, 2 years or one year, Part II of this Schedule shall have effect as if references to 4 years, 3 years, 2 years or one year, as the case may be, were substituted for references to 5 years.

5. Any report required by Part II of this Schedule shall either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary or shall make those adjustments and indicate that adjustments have been made.

SEVENTH SCHEDULE

STATEMENT REQUIRED PURSUANT TO DIVISION 6 OF PART IV

PART I

Section 107
(1), 113 (2).
Aust. 7th
Schedule.

Matters required to be stated in statement

1. The date of the statement.
2. The date of and parties to the deed referred to in section 114 of the Act.
3. The date of and parties to any deed or instrument by which any of the provisions of the approved deed relating to the interest has been amended or abrogated.
4. The name of the trustee or representative under any such deed and the address of the trustee's or representative's registered office.
5. A summary of the provisions of the deed regulating the retirement, removal and replacement of the trustee or representative.
6. The name of the management company and the address of its registered office.
7. The names, descriptions, and addresses of all the directors of the management company.
8. A summary of the provisions of the deed regulating the retirement, removal and replacement of the management company.
9. The name and address of the auditor of the accounts relating to interests under the deed.
10. A summary of the provisions of the deed regulating the appointment, retirement, removal and replacement of such auditor.
11. The duration, if ascertainable, of the undertaking, scheme, enterprise or investment contract to which the deed relates or if the duration is not ascertainable, that fact.
12. Full particulars with respect to the termination or winding up of the undertaking, scheme, enterprise or investment contract.
13. Such particulars as are sufficient to disclose the true nature of the undertaking, scheme, enterprise or investment contract in respect of which the interest is to be issued or offered to the public for subscription or purchase and the general nature of the property to which the interest relates.
14. The nature of the interest to be so issued or offered and of any units or sub-units into which the interest is divided and the rights in relation thereto of the persons who become the holders thereof.
15. The address where the register of interest holders is or will be kept and the days on and the hours during which it is or will be accessible to the public.
16. The method of calculation provided by the deed of the price at which the management company may sell the interest or any right in respect thereof or any unit or sub-unit of the interest.

SEVENTH SCHEDULE — *continued*

17. Such particulars as are sufficient to describe the duties and obligations imposed on the trustee or representative appointed by the deed relating to the interest.

18. The name and address of each person or corporation with whom or with which a holder of the interest is required, obliged or entitled, in connection with the undertaking, scheme, enterprise or investment contract, to enter into any contract whether by way of lease or otherwise.

19. The full names, description and residential addresses of the directors of each corporation referred to in paragraph 18.

20. Whether any property to which the interest relates is or will become vested in the trustee or representative, the nature and description of such property and the conditions or circumstances under which it is or will become so vested.

21. Where the interest consists of rights or interests in or arising out of an investment relating to property that ordinarily depreciates in value through use or effluxion of time, such particulars as are sufficient to disclose the true particulars of the provisions made for the replacement of such property and the source or sources from which such replacement is to be made or from which the cost of such replacement is to be met.

22. Except where the interest relates only to marketable securities which were purchased or acquired at not more than the ruling market prices, the full names and residential addresses of the vendors of any property to which the interest relates, whether such property was purchased or acquired by the management company or by any person or corporation referred to in paragraph 18 or is proposed to be so purchased or acquired, a full and true description of such property and the amount paid or to be paid therefor to each vendor.

23. Such particulars as are sufficient to disclose the true nature and extent of the interest, if any, of each director of the management company, whether as a director, direct or indirect shareholder, partner or otherwise, in the business of each such vendor and in such property.

24. The obligations imposed upon the management company or any other person to purchase from any holder thereof the interest or any rights in respect thereof or the units or sub-units of the interest for which he has subscribed or which he has purchased, and a statement of the method provided by the deed for the calculation of the purchase price thereof.

25. A summary of the rights and obligations of the management company and of the trustee or representative governing the valuation of any investment made or property held in relation to the interest.

26. A summary of the provisions of the deed whereby investments or other property comprising or forming part of the interest to which the deed relates may be varied.

SEVENTH SCHEDULE — *continued*

27. Full information regarding the remuneration of the trustee or representative and the management company respectively, the manner in which under the provisions of the deed such remuneration is provided for, and the charges (if any) that will be made by way of such remuneration upon the sale or purchase of any such interest and upon the distribution of income and capital or otherwise in connection with the relevant undertaking, scheme, enterprise or investment contract.

28. Whether the interest or any rights in respect thereof or any units or sub-units of the interest are transferable by the holders thereof and, if so, a summary of the provisions of the deed regulating such transfer.

29. A summary of the provisions of the deed relating to the distribution to the holders of the interest or of units or sub-units of the interest of the income derived from the undertaking, scheme, enterprise or investment contract.

30. Full information as to whether and to what extent any factor other than cash receipts by way of dividend, interest or bonus has been or will be taken into account in calculating the amount of income that will be payable to an interest holder.

31. If any reference is made to the yield of income obtained or likely to be obtained by the holders of the interest or of units or sub-units of the interest, a statement as to whether and to what extent anything other than cash receipts by way of dividends, interest or bonuses has been taken into account in calculating the yield.

32. A summary of the provisions of the Act and of the deed regulating the convening of meetings of holders of the interest or of units or sub-units of the interest.

33. The name and description and the date of commencement of operation of every other undertaking, scheme, enterprise or investment contract involving the issue of interests to the public conducted by the management company within the 5 years immediately preceding the date of the statement.

34. A declaration —

- (a) that no units or sub-units of interests issued pursuant to the statement shall be allotted later than 6 months after the date appearing in the statement pursuant to paragraph 1; and
- (b) unless the conditions of issue of the units or sub-units expressly provide that certificates be not issued, that certificates shall be issued by the trustee or representative to purchasers of or subscribers for units or sub-units of interests purchased or subscribed for pursuant to the statement not more than two months after the allotment of the units or sub-units.

SEVENTH SCHEDULE — *continued*

35. A summary of the provisions of the deed with respect to the undertakings —

- (a) by or on behalf of the management company relating to the allotment of interests and of units or sub-units of interests to which the deed relates; and
- (b) by or on behalf of the trustee or representative relating to the issue to holders of interests and of units or sub-units of interests of certificates of title thereto.

PART II

Reports to be set out in statement

36. A report or reports by a person who at the time of making the report or reports was an approved company auditor, and whose name must appear as such in the statement, setting out —

- (a) such information as sufficiently discloses the number of distributions (if any) of income to holders of interests or of units or sub-units of interests to which the deed relates in each of the 5 years immediately preceding the date of the statement during which those interests had been in existence, the amount of each distribution and the extent to which each distribution consisted of any component other than dividends, interest and bonuses, and where it consisted of any component other than dividends, interest and bonuses, the nature and value of each of those components;
- (b) such information, as sufficiently discloses the selling price and the purchase price, respectively, of those interests, units or sub-units on the date upon which each distribution was made;
- (c) such information as sufficiently discloses the selling price and purchase price, respectively, of those interests, units or sub-units on such date, being a date within a period of 14 days immediately preceding the date of the statement as is specified in the relevant report;
- (d) in respect of every issue of interests relating to any other undertaking, scheme, enterprise or investment contract conducted or entered into by the management company within the period of 5 years immediately preceding the date of the statement, similar information to that required under sub-paragraphs (a), (b) and (c); and
- (e) the profits or losses of the management company (and of every corporation with which a holder of the interest is required, obliged or entitled, pursuant to the undertaking, scheme, enterprise or investment contract, to enter into any contract) in respect of each of the 5 years during which the company and corporation, respectively, were carrying on business immediately preceding the date of

SEVENTH SCHEDULE — *continued*

the statement, and the rates of dividend (if any) paid by that company and that corporation in respect of each of those years, and the assets and liabilities of that company and of that corporation as at the last date to which its accounts were made up.

37. If in the case of a company which has been carrying on business, or of a business which has been carried on, for less than 5 years, the accounts of the company or business have only been made up in respect of 4 years, 3 years, 2 years or one year, this Schedule shall have effect as if references to 4 years, 3 years, 2 years or one year, as the case may be, were substituted for references to 5 years.

EIGHTH SCHEDULE

ANNUAL RETURN OF A COMPANY HAVING A SHARE CAPITAL

PART I

Contents of return

1. The address of the registered office of the company.
2. In a case in which the register of members is kept elsewhere than at the registered office, the address of the place where it is kept.
3. A summary, distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, specifying —
 - (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 up from the incorporation of the company to the date of the return;
 - (c) the amount called up on each share;
 - (d) the total amount of calls received, including payments on application and allotment;
 - (e) the total amount, if any, agreed to be considered as paid on shares which have been issued as fully or partly paid up otherwise than in cash;
 - (f) the total amount of calls unpaid;
 - (g) the total amount of the sums, if any, paid by way of commission in respect of any shares or debentures since the date of the last return;
 - (h) particulars of the discount allowed on the issue of any shares issued at a discount, or of so much of that discount as has not been written off at the date of the return;
 - (i) the total amount of the sums, if any, allowed by way of discount in respect of any debentures since the date of the last return;
 - (j) the total number of shares forfeited; and
 - (k) the total amount, if any, paid on shares forfeited.

Sections 197
(1), (2), 198
(1), (2).
U.K. 6th
Schedule.
Aust. 8th
Schedule.
15/84.

EIGHTH SCHEDULE — *continued*

4. Particulars of the total amount of the indebtedness of the company in respect of all charges which are required to be registered with the Registrar.

5. Except in the case of a company to which section 198 of the Act applies, a list as at the date of the return or as at such other date as the Registrar authorises in the case of any company —

- (a) containing the full names and addresses of all persons who on such date are members of the company;
- (b) stating the number of shares held by each member at the date of the list; and
- (c) if the names are not arranged in alphabetical order, having annexed thereto an index sufficient to enable the name of any person in the list to be easily found.

6. Where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the list must give particulars as to the amount of stock or the number of stock units instead of the amount of shares.

7. In the case of a company keeping a branch register —

- (a) references in paragraphs 5 and 6 to particulars required shall be taken as not including any such particulars contained in the branch register, insofar as copies of the entries containing those particulars are not received at the registered office of the company before the date of the list in question; and
- (b) where an annual return or a list of members is dated between the date when any entries are made in the branch register and the date when copies of those entries are received at the registered office of the company, the particulars contained in those entries, so far as relevant to an annual return, shall be included in the next or a subsequent annual return as may be appropriate having regard to the particulars included in that return with respect to the company's register of members.

8. All such particulars with respect to the persons who at the date of the return are, or are deemed to be, directors of the company and any person who at that date is a manager or secretary of the company as are by the Act required to be contained in the register of directors, managers and secretaries.

9. Name and address of the auditor of the company.

EIGHTH SCHEDULE — *continued*

PART II

Form of Return

Annual return of the Limited
made up to the day of 19 [being
the date or a date not later than the fourteenth day after the date of the
Annual General Meeting in 19].

The date of the annual general meeting of the company was
19

The address of the registered office of the company is .

The address of the place at which the register of members is kept if
other than the registered office is .

Summary of Share Capital and Shares

Nominal share capital \$ divided into¹ ... } shares of \$ each
} shares of \$ each
Total number of shares taken up¹ to the day
of 19 (*being the date of the*
return or other authorised date.) }

Number of shares issued subject to payment wholly in
cash ...

Number of shares issued as fully paid up otherwise
than in cash ...

Number of shares issued as partly paid up to the
extent of per share otherwise than in cash ...

²Number of shares (if any) of each class issued at a
discount ...

Total amount of discount on the issue of shares which
has not been written off at the date of this return

³There has been called up on each of shares, \$

³There has been called up on each of shares, \$

³There has been called up on each of shares, \$

⁴Total amount of calls received including payments
on application and allotment ... \$

1. Where there are shares of different kinds or amounts (e.g. Preference and Ordinary, or \$ and \$) state the numbers and nominal values separately.

2. If the shares are of different kinds, state them separately.

3. Where various amounts have been called or there are shares of different kinds, state them separately.

4. Include what has been received on forfeited as well as on existing shares.

EIGHTH SCHEDULE — *continued*

Total amount, if any, agreed to be considered as paid on shares which have been issued as fully paid up otherwise than in cash	...	\$
Total amount, if any, agreed to be considered as paid on shares which have been issued as partly paid up to the extent of per share otherwise than in cash	...	\$
Total amount of calls unpaid	...	\$
Total amount of the sums, if any, paid by way of commission in respect of any shares or debentures since the date of the last return	...	\$
Total amount of the sums, if any, allowed by way of discount in respect of any debentures since the date of the last return	...	\$
Total number of shares forfeited	...	
Total amount paid, if any, on shares forfeited	...	\$
¹ Total amount of the indebtedness of the company in respect of all charges which are required to be registered with the Registrar of Companies	...	\$

Copy of Last Audited Balance-sheet and Profit and Loss Account of the Company

This return must include a copy, certified by a director or by the manager or the secretary of the company to be a true copy of the last balance-sheet and of the last profit and loss account which have respectively been audited by the company's auditors (including every document required by law to be annexed or attached thereto) together with a copy of the report of the auditors thereon (certified as aforesaid) and which have been laid before the company in general meeting and in compliance with the requirements of the Act and if any such balance-sheet or account is in a language other than English there must also be annexed to it a translation thereof in English certified in the prescribed manner to be a correct translation. If the said last balance-sheet or account did not comply with the requirements of the law as in force at the date of the audit there must be made such additions to and corrections in the said copy as would have been required to be made therein in order to make it comply with the said requirements, and the fact that the said copy has been so amended must be stated thereon. If a company has more than one such audited balance-sheet or profit and loss account since the date of the last return, every such balance-sheet and profit and loss account must be included.

Notwithstanding the foregoing provisions of this paragraph this

1. State in respect of each charge the registered number thereof, the date of registration, and the amount of indebtedness at the date of the return.

EIGHTH SCHEDULE — *continued*

return need not include a copy of the last balance-sheet and profit and loss account of any company which is an exempt private company at the date of the return and has been an exempt private company since the date of the last return, the incorporation of the company or the date of the commencement of the Act, whichever last occurs, if the return includes a certificate signed by a director of the company, the secretary of the company and the auditor of the company which certifies that, to the best of their knowledge and belief —

- (a) the company is and has at all relevant times been an exempt private company;
- (b) a duly audited profit and loss account and balance-sheet which comply with requirements of the Act have been laid before the company in general meeting; and
- (c) as at the date to which the profit and loss account has been made up the company appeared to have been able to meet its liabilities as and when they would fall due.

Certificate to be Given by all Companies

A certificate in the form set out hereunder shall be given by the secretary or a director of every company.

CERTIFICATE

I, after having made due inquiries, certify —

- (a) having made an inspection of the share register, that transfers have *not*¹ been registered since the date of *the last annual return*¹

or

*the incorporation of the company*¹;

- (b)² that the company has not since the date of the last annual return³ issued any invitation to the public to subscribe for any shares in or debentures of the company or to deposit moneys for fixed periods or payable at call; and
- (c)⁴ that the excess of members of the company above 50 (counting joint holders of shares as one person) consists wholly of persons who are in the employment of the company or of its subsidiary or persons who while previously in the employment of the company or of its subsidiary were and thereafter have continued to be members of the company.

Signature

*Director
or Secretary*

1. Strike out if inapplicable.
 2. Strike out this paragraph if the company is not a private company.
 3. In the case of the first annual return of a private company strike out the words "last annual return" and substitute therefor the words "incorporation of the company".
 4. Strike out this paragraph except in the case of a private company whose members exceed 50.

EIGHTH SCHEDULE — *continued*

Particulars of the Directors, Managers, Secretaries and Auditors of the
 Limited, at the date of the Annual Return*

Present full name	Any former names	Usual address†	Other business occupation and in the case of directors particulars of other directorships required to be shown by s. 173 (2) (b) and (3) (If none, state so)
Directors Manager (if any) Secretaries Auditors for current financial year			

* "Director" includes any person who occupies the position of a director by whatever name called and any person in accordance with whose directions or instructions the directors of a company are accustomed to act.

† In the case of directors the address given must be the usual residential address. See section 173 (2) (a).

List of persons holding shares in the _____ Limited
 on the _____ day of _____ 19 _____ (*being the
 date of the return or other authorised date*) and an account of the shares
 so held.

Note: If the names in this list are not arranged in alphabetical order, an index sufficient to enable the name of any person in the list to be readily found must be annexed to this list.

EIGHTH SCHEDULE — *continued*

Folio in register ledger containing particulars	Names and addresses	*Number of shares held by existing members†

* The aggregate number of shares held, and not the distinctive numbers, must be stated, and the column must be added up throughout so as to make one total to agree with that stated in the summary to have been taken up.

† When the shares are of different classes these columns may be subdivided so that the number of each class held may be shown separately. Where any shares have been converted into stock particulars of the amount of stock must be shown.

[*Signature.*]

[*State whether director or manager or secretary.*]

NINTH SCHEDULE

ACCOUNTS

Profit and loss account

1. There shall be shown in respect of the period of accounting —
 - (a) the net balance of profit and loss on the company's business;
 - (b) the gross income before deduction of income tax from investments distinguishing between income received from the following:
 - (i) quoted investments in subsidiaries;
 - (ii) unquoted investments in subsidiaries;
 - (iii) quoted equity investments in companies other than subsidiaries;
 - (iv) unquoted equity investments in companies other than subsidiaries;
 - (v) other quoted investments; and
 - (vi) other unquoted investments;

Sections 201
(11), (15),
373 (5).
U.K. 8th
Schedule.
Aust. 9th
Schedule.
15/84.

NINTH SCHEDULE — *continued*

- (c) amounts (if any) charged for depreciation or amortization on —
 - (i) investments;
 - (ii) goodwill;
 - (iii) fixed assets;
- (d) the amount of —
 - (i) interest on the company's debentures and fixed term loans;
 - (ii) rent for land and buildings used by the company; and
 - (iii) charges for the hire of plant and machinery used by the company;
- (e) any profit or loss arising from a sale or revaluation of fixed or intangible assets if brought into account in determining the company's profit or loss;
- (f) the amounts, if material, set aside or proposed to be set aside to, or withdrawn from, reserves;
- (g) the amount, if material, set aside to provisions other than provisions for depreciation, renewals or diminution in value of assets or, as the case may be, the amount, if material, withdrawn from such provisions and not applied for the purposes thereof;
- (h) the amounts respectively provided for redemption of share capital and for redemption of loans;
- (i) provision made for payment of income tax in respect of the period of accounting;
- (j) the aggregate amount of the dividends paid and the aggregate amount of the dividends proposed to be paid;
- (k) the total of the amount paid to the directors as remuneration for their services, inclusive of all fees, percentages, bonuses and commissions or other emoluments paid to or receivable by them by or from the company or by or from any subsidiary of the company, and inclusive of commission paid or payable for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares in or debentures of the company or of its holding company or any subsidiary of the company:

Provided that where a director or any firm of which the director is a member acts for the company in a professional capacity the amount paid to the director or to his firm for services rendered to the company in that capacity shall not be included in the aforesaid total but shall be shown separately whether by way of note or otherwise;
- (l) the total of the amount paid to or receivable by the auditors as remuneration for their services as auditors, inclusive of all fees, percentages or other payments or consideration

NINTH SCHEDULE — *continued*

given, by or from the company or by or from any subsidiary of the company; and

- (m) any exceptional credits or charges arising in the period of accounting or arising from previous years but earned or incurred in the period of accounting.

Balance-sheet

2.—(1) There shall be shown as at the end of the period of accounting —

- (a) the amount of authorised capital and particulars of issued capital distinguishing between classes of shares and specifying by way of note to the balance-sheet any portion of the share capital which has not already been called up and which is not capable of being called up except in the event and for the purposes of the company being wound up and stating the rates of dividend, and whether participating or cumulative or both, attaching to shares other than ordinary shares, and stating amount of calls in arrear in each class;
- (b) the part of the issued capital that consists of redeemable preference shares, the date on or before which these shares are, or are liable, to be redeemed and the earliest date on which the company has power to redeem those shares (showing by note or otherwise whether the redemption is optional to or obligatory on the company) and the amount of the premium (if any) at which those shares are redeemable;
- (c) so far as the information is not given in the profit and loss account, any share capital on which interest has been paid out of capital during the financial year, and the rate at which interest has been so paid;
- (d) the amount of the share premium account;
- (e) particulars of any redeemed debentures which the company has power to reissue;
- (f) under separate headings, so far as they are not written off —
- (i) the preliminary expenses;
 - (ii) any expenses incurred in connection with any issue of shares or debentures;
 - (iii) any sums paid by way of commission in respect of any shares or debentures;
 - (iv) any sums allowed by way of discount in respect of any debentures;
 - (v) the amount of the discount allowed on any issue of shares at a discount; and
 - (vi) if the amount of the goodwill and of any patents and trade marks or part of that amount is shown as a

NINTH SCHEDULE — *continued*

separate item in or is otherwise ascertainable from the books of the company, or from any contract for the sale or purchase of any property to be acquired by the company, or from any documents in the possession of the company relating to the stamp duty payable in respect of any such contract or the conveyance of any such property — the said amount so shown or ascertained;

- (g) the reserves, provisions, liabilities, fixed assets and current assets classified separately under headings appropriate to the company's business showing separately any reserves not available for distribution as dividends and the provision for taxation and stating the method used to arrive at the amount of assets under each heading but —
 - (i) where the amount of any class is not material, it may be included under the same heading as some other class;
 - (ii) where any assets of one class are not separable from assets of another class, those assets may be included under the same heading; and
 - (iii) where any assets cannot truly and fairly be shown as either fixed assets or current assets, those assets may be included separately under an appropriate heading;
- (h) under separate headings, stating the method used to arrive at the amount of the investments under each heading and showing the quoted market values of investments which are quoted or dealt in on any prescribed stock exchange in Singapore or elsewhere —
 - (i) quoted investments in subsidiaries;
 - (ii) unquoted investments in subsidiaries;
 - (iii) quoted equity investments in companies other than subsidiaries;
 - (iv) unquoted equity investments in companies other than subsidiaries;
 - (v) other quoted investments; and
 - (vi) other unquoted investments;
- (i) under separate headings —
 - (i) amounts owing by subsidiaries of the company;
 - (ii) trade debts and bills receivable (other than amounts owing by subsidiaries of the company);
 - (iii) the amount outstanding of any loan made, guaranteed or secured by the company, being a loan made to a director of the company or of a corporation which is deemed by virtue of

NINTH SCHEDULE — *continued*

section 6 of the Act to be related to the company or a loan made to another corporation in which a director of the company or of a company which is so deemed to be related to the company owns a controlling interest; and

- (iv) other debts owing to the company,
and where any amounts or debts shown under such a heading include any sums which consist of or are in the nature of interest, accommodation charges, service charges, maintenance charges or insurance premiums those sums shall except to the extent that they have become due and payable and have been demanded be shown as a deduction from the amounts or debts shown under that heading;
- (j) balance of profit and loss account;
- (k) debentures (showing separately amounts that are redeemable not later than 12 months after the date to which the accounts are made up and amounts that are redeemable later than 12 months after that date);
- (l) liabilities (other than debentures, bank loans and overdrafts) secured by any charge on the assets whether registered or not (showing separately the aggregate of the amounts that are payable not later than 12 months after the date to which the accounts are made up and the aggregate of the amounts that are payable later than 12 months after that date);
- (m) bank loans and overdrafts distinguishing between those which are secured and those which are unsecured;
- (n) amounts borrowed without security (showing separately the aggregate of the amounts that are or may be repayable not later than 12 months after the date to which the accounts are made up and the aggregate of the amounts that are repayable later than 12 months after that date);
- (o) amounts owing to subsidiaries of the company;
- (p) amounts owing to trade creditors (other than amounts owing to subsidiaries of the company);
- (q) other amounts owing by the company;
- (r) under separate headings (to be stated by way of note if not otherwise shown) —
 - (i) contingent liabilities unsecured;
 - (ii) contingent liabilities secured upon the company's assets; and
 - (iii) where practicable, the aggregate amount, if it is material, of contracts for capital expenditure, so far as that amount has not been provided for; and
- (s) arrears of dividends on preference shares.

NINTH SCHEDULE — *continued*

(2) For the purposes of this sub-paragraph, where more than one method is used to arrive at any amount shown in the balance-sheet, there shall be shown in the balance-sheet a separate total in respect of each of the methods so used.

(3) There shall be shown by way of note or otherwise on the balance-sheet of every company which is a borrowing corporation or a guarantor corporation a schedule setting out separately estimates of the amounts of the liabilities payable by and the debts payable to the company —

- (a) not later than two years;
- (b) later than two years but not later than 5 years; and
- (c) later than 5 years,

calculated from the date to which the balance-sheet of the company was made up.

3.—(1) The method of arriving at the amount of any investment or fixed asset shall, subject to sub-paragraph (2), be to take the difference between —

- (a) its cost or, if it stands in the company's books at a valuation other than cost, the amount of the valuation; and
- (b) the aggregate amount provided or written off since the date of acquisition or valuation as the case may be, for depreciation or diminution in value.

(2) For the purposes of this paragraph, the net amount at which any assets stand in the company's books at the date of the commencement of the Act (after deduction of the amounts previously provided or written off for depreciation or diminution in value) shall, if the figures relating to the period before that date cannot be obtained without unreasonable expense or delay, be treated as if it were the amount of the valuation of those assets made at that date, and where any of those assets are sold, the said net amount less the amount of the sales shall be treated as if it were the amount of a valuation so made of the remaining assets.

(3) Sub-paragraph (1) shall not apply —

- (a) to assets for which the figures relating to the period beginning with the date of the commencement of the Act cannot be obtained without unreasonable expense or delay;
- (b) to assets the replacement of which is provided for wholly or partly —
 - (i) by making provision for renewals and charging the cost of replacement against the provision so made; or
 - (ii) by charging the cost of replacement direct to revenue;

NINTH SCHEDULE — *continued*

- (c) to any investments of which the market value (or, in the case of investments not having a market value, their value as estimated by the directors) is shown either as the amount of the investments or by way of note; or
 - (d) to goodwill, patents or trade marks.
- (4) For the assets under each heading whose amount is arrived at in accordance with sub-paragraph (1), there shall be shown —
- (a) the aggregate of the amounts referred to in sub-paragraph (1) (a); and
 - (b) the aggregate of the amounts referred to in sub-paragraph (1) (b).
- (5) As respects the assets under each heading whose amount is not arrived at in accordance with sub-paragraph (1) because their replacement is provided for as mentioned in sub-paragraph (3) (b), there shall be stated —
- (a) the means by which their replacement is provided for; and
 - (b) the aggregate amount of the provisions (if any) made for renewals and not used.

Holding and subsidiary companies

- 4.—(1) There shall be annexed to the profit and loss account of every holding company —
- (a) a separate profit and loss account for each subsidiary of the company;
 - (b) a consolidated profit and loss account of the holding company and of its subsidiaries eliminating all inter-company transactions; or
 - (c) a consolidated profit and loss account of the holding company and of some of its subsidiaries eliminating all inter-company transactions and a separate profit and loss account for each subsidiary the accounts of which are not included in the consolidated profit and loss account; but in any such case the directors shall disclose by way of note on the consolidated profit and loss account their reasons for not causing the accounts of such one or more subsidiaries to be consolidated.
- (2) There shall be clearly stated (by way of note or otherwise) either in the profit and loss account of the holding company or in any document annexed thereto pursuant to sub-paragraph (1) the name and place of incorporation of each subsidiary to which that profit and loss account or other document relates.
- (3) There shall be annexed to the balance-sheet of every holding company —
- (a) a balance-sheet of each subsidiary of the company;

NINTH SCHEDULE — *continued*

- (b) a consolidated balance-sheet of the holding company and of its subsidiaries eliminating all inter-company balances; or
- (c) a consolidated balance-sheet of the holding company and of some of its subsidiaries eliminating all inter-company balances and a separate balance-sheet for each subsidiary the assets and liabilities of which are not included in the consolidated balance-sheet: but in any such case the directors shall disclose by way of note on the consolidated balance-sheet their reasons for not causing the assets and liabilities of such one or more subsidiaries to be consolidated.

(4) Such profit and loss accounts and balance-sheets shall be in the same form as the profit and loss account and balance-sheet of the holding company and shall be accompanied by the auditor's report thereon.

(5) In the case of a subsidiary company incorporated in a country outside Singapore whether it has or has not established a place of business in Singapore, which is a country which has been declared by the Minister by notification in the *Gazette* to be a country to which this subparagraph applies, it shall be sufficient if the separate profit and loss account or balance-sheet, as the case requires, of such subsidiary company is in such form and is so reported upon by auditors and contains such particulars and includes such documents, if any, as the company is required to make out and lay before the company in general meeting by the law for the time being applicable to such company in the place where it is incorporated.

(6) If the auditor's report on the balance-sheet or profit and loss account of a subsidiary company is qualified in any way, the separate balance-sheet of the subsidiary company or the consolidated balance-sheet of the holding company, as the case may be, shall contain particulars of the manner in which the report is qualified.

(7) There shall be shown under separate headings in the balance-sheet of every subsidiary company the amounts owed by the subsidiary to its holding company and to corporations which are by virtue of section 6 of the Act deemed to be related to it, the amounts owed by such holding company and by such corporations to it, and the extent of its holding of shares in its holding company and in such corporations.

(8) This paragraph shall not apply to a subsidiary which would not be a subsidiary but for the operation of section 5 (1) (a) (i) or (ii) of the Act.

General

5.—(1) All amounts shown in profit and loss accounts and balance-sheets shall be quoted in Singapore currency, and not otherwise.

(2) Except in the case of the first balance-sheet or profit and loss account laid before the company after the date of the commencement of

NINTH SCHEDULE — *continued*

the Act, there shall be shown in every balance-sheet and profit and loss account the corresponding amounts for all items shown in the balance-sheet or profit and loss account last laid before the company in general meeting.

(3) Every profit and loss account or balance-sheet shall state by way of note if any conversion into Singapore currency has been made for the purposes of the profit and loss account and balance-sheet the basis of the conversion of the other currency into Singapore currency.

TENTH SCHEDULE

TAKE-OVER OFFERS

PART A

Section 213.
Aust. 10th
Schedule.
49/73
15/84.

Requirements with which take-over offers to comply

1. The offer shall be dated and shall be despatched to the offeree within 3 days of its date and shall state that, except in so far as it and all other take-over offers made under the take-over scheme may be totally withdrawn and every person released from any obligation incurred thereunder, it will remain open for acceptance by the offeree for at least 21 days from the date of despatch.

2. The offer shall not be conditional upon the offeree approving or consenting to any payment or other benefit being made or given to any director of the offeree company or any corporation which is deemed by virtue of section 6 of the Act to be related to that company as compensation for loss of office or as consideration for, or in connection with, his retirement from office.

3. The offer shall state —

- (a) whether or not the offer is conditional upon acceptance of offers made under the take-over scheme being received in respect of a minimum percentage of shares and, if so, that percentage;
- (b) if the shares are to be acquired in whole or in part for cash, the period within which payment will be made and the method of payment; and
- (c) if the shares are to be acquired for a consideration other than cash, the period within which the offeree will receive that consideration.

4. Where the offer is conditional upon acceptances in respect of a minimum percentage of shares being received, the offer shall specify —

- (a) a date not being a date later than 60 days after the date of the despatch of the offer or such later date as the Registrar may in a competitive situation or in special circumstances allow as the latest date on which the offeror corporation can declare the offer to have become free from that condition; and

TENTH SCHEDULE — *continued*

- (b) a further period of not less than 14 days from the date on which the offer would otherwise have expired during which the offer will remain open for acceptance after it has been declared unconditional.

Where the offer becomes or is declared unconditional as to acceptances on or by an expiry date and the offeror corporation has given at least 14 days' notice in writing to the shareholders of the offeree company that the offer will not be open for acceptance beyond that date, the offer need not remain open for acceptance for the further period specified in sub-paragraph (b). No such notice may be given between the time when a competing offer has been announced and the resultant competitive situation has ended.

5. Every offer document shall contain the following words which are to be displayed prominently in that document:

“If you are in any doubt about this offer you should consult your stockbroker, bank manager, solicitor or other professional adviser.”.

PART B

Requirements with which statement given by offeror corporation to comply

1. The statement shall —
 - (a) specify the names, descriptions and addresses of all the directors of the offeror corporation;
 - (b) contain a summary of the principal activities of the offeror corporation;
 - (c) specify the number and description and amount of marketable securities in the offeree company held by or on behalf of the offeror corporation, or if none are so held contain a statement to that effect;
 - (d) if the shares are to be acquired for a consideration which consists of shares or debentures in the offeror corporation or in a corporation which is by virtue of section 6 of the Act deemed to be related to the offeror corporation —
 - (i) set out the reports which, if the statement were a prospectus issued on the date on which notice of the take-over scheme is given to the offeree company, would be required to be set out in it under paragraphs 20 and 23 in Part II of the Fifth Schedule; and
 - (ii) specify details of any alterations in the capital structure of the offeror corporation or of any subsidiary of that corporation during the period of 5 years immediately preceding the date on which notice of the take-over scheme is given to the offeree company and particulars of the source of any increase in capital;

TENTH SCHEDULE — *continued*

- (e) if the shares are to be acquired for a consideration other than wholly in cash or other than for a consideration such as is referred to in sub-paragraph (d) contain such information and details as to the consideration as the Registrar requires.

2. The statement shall contain particulars of any restriction on the right to transfer the shares to which the take-over scheme relates contained in the memorandum or articles or other instrument constituting or defining the constitution of the offeree company which has the effect of requiring the holders of the shares, before transferring them, to offer them for purchase to members of the offeree company or to any other person and, if there is any such restriction, the arrangements, if any, being made to enable the shares to be transferred in pursuance of the take-over scheme.

3. If the consideration for the acquisition of shares under the take-over scheme is to be satisfied in whole or in part by the payment of cash, the statement shall contain details of the arrangements that have been, or will be, made to secure payment of the cash consideration and, if no such arrangements have been or will be made, shall contain a statement to that effect.

4. The statement shall set out —

- (a) whether or not it is proposed in connection with the take-over scheme that any payment or other benefit shall be made or given to any director of the offeree company or of any corporation which is by section 6 of the Act deemed to be related to that company as compensation for loss of office or as consideration for, or in connection with, his retirement from office and if so, particulars of the proposed payment or benefit in respect of each such director;
- (b) whether or not there is any other agreement or arrangement made between the offeror corporation and any of the directors of the offeree company in connection with or conditional upon the outcome of the scheme, and, if so, particulars of any such agreement or arrangement;
- (c) whether or not there has been within the knowledge of the offeror corporation any material change in the financial position or prospects of the offeree company since the date of the last balance-sheet laid before the company in general meeting, and, if so, particulars of any such change; and
- (d) whether or not there is any agreement or arrangement whereby any shares acquired by the offeror corporation in pursuance of the scheme will or may be transferred to any other person, and, if so —
- (1) the names of the persons who are a party to the agreement or arrangement and the number, description and amount of the shares which will or may be so transferred; and

TENTH SCHEDULE — *continued*

- (ii) the number, if any, and description and amount of shares of the offeree company held by or on behalf of each of these persons, or if no such shares are so held, a statement to that effect.

5. The succeeding provisions of this Part of this Schedule apply only where the consideration to be offered in exchange for shares of the offeree company consists in whole or in part of marketable securities issued or to be issued by the offeror corporation or by any other corporation.

6. Where the marketable securities are quoted or dealt in on a stock exchange, the statement shall state this fact and specify the stock exchanges concerned and specify —

- (a) the latest available market sale price prior to the date on which notice of the take-over scheme is given to the offeree company;
- (b) the highest and lowest market sale price during the 3 months immediately preceding that date and the respective dates of the relevant sales; and
- (c) where the take-over scheme has been the subject of a public announcement in newspapers or by any other means, the latest market sale price immediately prior to the public announcement.

7. Where the securities are quoted or dealt in on more than one stock exchange, it is sufficient compliance with paragraph 6 (a) of this Schedule if information with respect to the securities is given in relation to the stock exchange at which there have been the greatest number of recorded dealings in the securities in the 3 months immediately preceding the date on which notice of the take-over scheme is given to the offeree company.

8. Where the take-over scheme relates to securities which are not quoted or dealt in on a stock exchange, the statement shall contain all the information which the offeror corporation may have as to the number, amount and price at which the securities have been sold in the 3 months immediately preceding the date on which notice of the scheme is given to the offeree company and, if the offeror corporation has no such information, a statement to that effect.

PART C

*Requirements with which statement given by
offeree company to comply*

15/84.

1. The statement shall indicate whether or not the board of directors of the offeree company recommends to shareholders the acceptance of take-over offers made, or to be made, by the offeror corporation under the take-over scheme.

TENTH SCHEDULE — *continued*

2. The statement shall set out —
- (a) the number, description and amount of marketable securities in the offeree company held by or on behalf of each director of that company or, in the case of a director where none are so held, that fact;
 - (b) in respect of each such director of the offeree company by whom, or on whose behalf, shares to which the take-over scheme relates are held —
 - (i) whether or not the present intention of the director is to accept any take-over offer that may be made in pursuance of the take-over scheme in respect of those shares; or
 - (ii) that the director has not decided whether he will accept such a take-over offer;
 - (c) whether or not any marketable securities of the offeror corporation are held by, or on behalf of, any director of the offeree company and, if so, the number, description and amount of the marketable securities so held;
 - (d) whether or not it is proposed in connection with the take-over scheme that any payment or other benefit shall be made or given to any director of the offeree company or of any other corporation which is by virtue of section 6 of the Act deemed to be related to that company as compensation for loss of office or as consideration for, or in connection with, his retirement from office and, if so, particulars of the proposed payment or benefit;
 - (e) whether or not there is any other agreement or arrangement made between any director of the offeree company and any other person in connection with or conditional upon the outcome of the take-over scheme and, if so, particulars of any such agreement or arrangement;
 - (f) whether or not any director of the offeree company has any direct or indirect interest in any contract entered into by the offeror corporation and, if so, particulars of the nature and extent of such interest;
 - (g) if the shares to which the scheme relates are not quoted or dealt in on a stock exchange all the information which the offeree company may have as to the number, amount and price at which any such shares have been sold in the 6 months preceding the date on which notice of the take-over scheme was given to the offeree company; and
 - (h) whether or not there has been any material change in the financial position of the offeree company since the date of the last balance-sheet laid before the company in general meeting and if so, particulars of such change.