JAMAICA

No. 10 – 2004

I assent,

[L.S.]

HOWARD F. COOKE,
Governor-General
25th day of March, 2004

AN ACT to Repeal and replace the Companies Act.

[The date notified by the Minister bringing the Act into operation]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and with the authority of the same, as follows:—

PART I—*Preliminary*

Short title and commencement.

1. This Act may be cited as the Companies Act, 2004, and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

Interpretation.

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

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

"affiliated" in relation to two or more companies means that—

(a) one of them is the subsidiary of the other;

(b) each of them is a subsidiary of the same company;

(c) each of them is controlled directly or indirectly by the same person; or

(d) each of them by virtue of paragraph (a), (b) or (c) has a relationship with the same company at the same time;

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

"annual return" means the return required to be made, in the case of a company having a share capital, under section 122, and, in the case of a company not having a share capital, under section 123;

"appointed day" means the date of commencement of this Act;

"articles" means the articles of incorporation of a company as originally framed or as altered by special resolution;

"associate" in relation to any person means—

(a) a company or body corporate of which that person beneficially owns or controls, directly or indirectly, shares or debentures convertible into shares, that carry more than 20 percent of the voting rights—

(i) under all circumstances;

(ii) by reason of the occurrence of an event that is continuing; or

(iii) by reason of a currently exercisable option or right to purchase those shares or those convertible debentures;

(b) a partner of that person acting on behalf of the partnership of which they are partners;

(c) a trust or estate in which that person has a substantial beneficial interest or in respect of which he serves as a trustee or in a similar capacity;

(d) a spouse of that person;

(e) a child, step-child or adopted child of that person;

(f) an immediate relative of that person or of his spouse;

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

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

"the Court" used in relation to a company means the Supreme Court;

"debenture" includes debenture stock, bonds and any other securities of a company whether constituting a charge on the assets of the company or not;

"director" includes any person occupying the position of director by whatever name called;

"document" includes, in addition to a document in writing—

(a) any map, plan, graph or drawing;

(b) any photograph;

(c) any disc, tape, sound track or other device in which sounds or other data are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;

"existing company" means a company formed and registered before the commencement of this Act under the Law in force before that date;

"file accounts" has the meaning assigned to that expression by subsection (4) of section 25;

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

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

"immediate relative", as respects any person, means his spouse, or his children (including step-children) and their spouses, his parents, his brother or sister;

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

"prescribed" means, as respects the provisions of this Act relating to procedure, winding up, and the costs and fees in connection therewith, prescribed by rules of court, and as respects the other provisions of this Act, prescribed by the Minister;

"prospectus" means any prospectus, notice, circular advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company;

"Registrar" or "Registrar of Companies" means the public officer referred to in section 351;

"rules" means rules provided for in this Act, and includes rules of court and forms;

"shadow director" in relation to a company, means a person in accordance with whose directions or instructions the directors of the company are accustomed to act, so, however, that a person is not deemed a shadow director by reason only that the directors act on advice given by him in a professional capacity;

"share" means a share in the share capital of a company, and includes stock except where a distinction between stock and shares is expressed or implied;

"share warrant" has the meaning assigned to that expression by subsection (2) of section 82;

"stated capital" includes—

(a) the total issue price (including consideration other than cash) of all classes of shares;

(b) the full value of transfers to capital by the company from profit, or revenue reserves, including the total issue price of bonus shares issued upon a capitalization of profits or revenue reserves;

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

"time of the opening of the subscription lists" has the meaning assigned to that expression by subsection (2) of section 51;

"Trustee" has the meaning assigned to it by section 231.

(2) A person shall not be deemed, within the meaning of any provision in this Act, to be a person in accordance with whose directions or instructions the directors of a company are accustomed to act, by reason only that the directors of the company act on advice given by him in a professional capacity.

(3) Wherever in this Act or in any rules a copy of an order of the Court is required to be served on or delivered to the Registrar the copy so to be served or delivered shall be an office copy.

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

(5) Any document filed with the Registrar shall be capable of being read.

Incorporation of Companies and Matters Incidental thereto

3.—(1) One or more persons may form a company by signing and sending articles of incorporation to the Registrar and otherwise complying with the requirements of this Act in respect of registration. Mode of forming incorporated company.

(2) Such a company may be either—

(a) a company having the liability of its members limited by the articles to the amount, if any, unpaid on the shares respectively

held by them (in this Act termed "a company limited by shares"); or

(b) a company having the liability of its members limited by the articles to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act termed "a company limited by guarantee") whether or not such a company has a share capital; or

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

Capacity and powers.

4.—(1) A company has the capacity, and, subject to this Act, the rights, powers and privileges of an individual.

(2) A company has the capacity to carry on its business, conduct its affairs and exercise its powers in any jurisdiction outside Jamaica to the extent that the laws of Jamaica and of that jurisdiction permit.

(3) It is not necessary for a bylaw to be passed to confer any particular power on a company or its directors.

(4) This section does not authorize any company to carry on any business or activity in breach of—

(a) any enactment prohibiting or restricting the carrying on of the business or activity; or

(b) any provision requiring any permission or licence for the carrying on of the business or activity.

Powers reduced.

5. A company shall not carry on any business or exercise any power that it is restricted by its articles from carrying on or exercising, nor shall a company exercise any of its powers in a manner contrary to its articles.

Validity of acts.

6. For the avoidance of doubt, it is hereby declared that, unless otherwise specifically provided in this Act or any other enactment, an act of a company that is contrary to its articles (including any transfer of property to or by a company) shall not be invalid by reason only that the act is contrary to its articles.

7. No person shall be affected by, or presumed to have notice or knowledge of, the contents of a document concerning a company by reason only that the document has been filed with the Registrar or is available for inspection at any office of the company. Notice not presumed.

Articles of Incorporation

8.—(1) Articles of incorporation of a company shall be in the prescribed form and shall set out in respect of the company— Form of articles.

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

(b) that the registered office of the company is to be situated in the Island;

(c) in the case of a company having a share capital, the classes of shares, if any, and the maximum number of shares, if any, that the company is authorized to issue;

(d) if the right to transfer shares in the company is to be restricted, a statement to that effect and giving the nature of the restriction;

(e) the number of directors, or the maximum or minimum number of directors of the company;

(f) any restrictions on the business that the company may carry on.

(2) Articles shall—

(a) be printed or typewritten or be in some legible form or other form acceptable to the Registrar;

(b) be divided into paragraphs numbered consecutively;

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

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

(3) Nothing in this section shall operate to prevent the inclusion in the articles of a company, of provisions with respect to any matter not required by this section to be included in the articles.

(4) The articles of a company referred to in section 11 (a) and (b) shall state that the liability of its members is limited.

(5) The articles of a private company shall contain the matters specified in section 25 (1).

(6) The form of the articles of—

(a) a company limited by shares;

(b) a company limited by guarantee and not having a share capital;

(c) a company limited by guarantee and having a share capital;

(d) an unlimited company having a share capital,

may be respectively in accordance with the forms set out in Tables A, B, C and D in the First Schedule, except to the extent that they are excluded in whole or in part or modified.

First Schedule.

(7) A company having a share capital shall, where applicable, file a document with the Registrar setting out the following—

(a) if two or more classes of shares are issued, the rights, privileges, restrictions and conditions attaching to each class of shares; and

(b) if a class of shares may be issued in a series, the authority given to the directors to fix the number of shares in, and to determine the designation of, and the rights, privileges, restrictions and conditions attaching to the shares of each series.

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

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

(2) Where an unlimited company or a company limited by guarantee has increased the number of its members beyond the registered number, it shall, within fifteen days after the increase was resolved on or took place, give to the Registrar notice of the increase, and the Registrar shall record the increase.

(3) If default is made in complying with subsection (2), the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

Alteration of articles by special resolution.

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

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

Registration

Registration of articles.

11. The articles shall be delivered to the Registrar who shall—

(a) retain and register them if the articles comply, with the provisions of this Act; or

(b) where the articles are not in compliance, require that they be amended to ensure such compliance.

Effect of registration.

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

(2) From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the articles, together with such other persons as may from time to time become members of the company, shall be a company by the name contained in the articles, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.

Conclusiveness of certificate of incorporation.

13.—(1) A certificate of incorporation given by the Registrar in respect of any association shall be conclusive evidence that all the requirements

of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorized to be registered and duly registered under this Act.

(2) A statutory declaration by an attorney-at-law engaged in the formation of the company, or by a person named in the articles as a director or secretary of the company, or by a person who is a member of the Institute of Chartered Secretaries and Administrators engaged in the formation of the company, of compliance with all or any of the said requirements shall be produced to the Registrar, and the Registrar may accept such a declaration as sufficient evidence of compliance.

Registration of unlimited company as limited.

14.—(1) Subject to the provisions of this section, a company registered as unlimited may register under this Act as limited, or a company already registered as a limited company may re-register under this Act, but the registration of an unlimited company as a limited company shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by, to, with or on behalf of the company before the registration, and those rights or liabilities may be enforced as provided by this Act in the same manner in all respects as if no such change of registration had taken place.

(2) On registration in pursuance of this section the Registrar shall close the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company, but, save as aforesaid, the registration shall take place in the same manner and shall have effect as if it were the first registration of the company under this Act.

(3) Where a company limited by shares re-registers as a company limited by guarantee, the amount of the guarantee shall not be less than the amount remaining unpaid on the shares.

Provisions with respect to Names of Companies

Prohibition of registration of companies by undesirable names.

15.—(1) No company shall be registered by a name which in the opinion of the Registrar is undesirable having regard to such provisions as may be prescribed.

(2) If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name is registered by a name which in the opinion of the Registrar too closely resembles the name by which a company in existence is previously registered, the firstmentioned company may, with the sanction of the Registrar, change its name, and shall, if the Registrar so directs within six months of its being registered by that name, change its name within six weeks of the date of such direction or within such longer period as the Registrar may think fit to allow.

(3) If at any time after a company has been registered it appears to the Registrar that the name under which it is registered is undesirable, the Registrar may notify the company accordingly and may in such notification direct the company to change its name, and the company shall change its name within six weeks of such direction unless within that time it has lodged an appeal to the Court against such direction.

(4) The Court shall thereupon either cancel or confirm such direction and its decision shall be final and conclusive.

(5) If the direction is confirmed the company shall change its name within six weeks of such confirmation.

(6) If a company makes default in complying with a direction under subsection (2) or, except where an appeal has not been disposed of, under subsection (3), it shall be liable to a fine not exceeding one thousand dollars for every day during which the default continues.

(7) Subsections (3), (4) and (5) of section 17 shall apply to a change of name under this section as they apply to a change of name under that section.

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

16.—(1) Where it is proved to the satisfaction of the Minister that an association about to be formed as a limited company is to be formed for promoting commerce, art, science, religion, charity or any other useful object, and intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Minister may by licence direct that the association may be registered as a company with limited liability, without the addition of the word "limited" to its name, and the association may be registered

accordingly and shall, on registration enjoy all the privileges and (subject to the provisions of this section) be subject to all the obligations of limited companies.

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

(a) that the objects of a company registered under this Act as a limited company or of an existing company, being a limited company, is restricted to the matters specified in subsection (1) and to objects incidental or conducive thereto; and

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

the Minister may by licence authorize the company to make by special resolution a change in its name including or consisting of the omission of the word "limited", and subsections (4), (5) and (6) of section 17 shall apply to a change of name under this subsection as they apply to a change of name under that section.

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

(4) A body to which a licence is granted under this section shall be exempted from the provisions of this Act relating to the use of the word "limited" as any part of its name, the publishing of its name and the sending of lists of members to the Registrar.

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

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

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

(7) Where a licence granted under this section to a body the name of which contains the words "Chamber of Commerce" is revoked, the notice to be given under the proviso to subsection (5) shall include a statement of the effect of the provisions of subsection (2) of section 17.

(8) The procedure in cases of applications for licences under this section shall be in accordance with that set out in the Tenth Schedule. Tenth Schedule.

Change of Name.

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

(2) Where a licence granted pursuant to section 16 to a body the name of which contains the words "Chamber of Commerce" is revoked, the body shall, within a period of six weeks from the date of the revocation or such longer period as the Registrar may think fit to allow, change its name to a name which does not contain those words.

(3) If such a body makes default in complying with the requirements of subsection (2), it shall be liable to a fine not exceeding two thousand dollars for every day during which the default continues.

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

(5) The change of name shall not affect any rights or obligations of the company or body, or render defective any legal proceedings by or against it, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

(6) Where a company or body changes its name under this section it shall cause notice of the change of name to be published in the Gazette and in a daily newspaper printed and circulating in the Island within thirty days after the date on which the Registrar approves the change and if default is made in complying with this subsection the company or body and every director, manager, secretary or other officer of the company or body who knowingly and wilfully authorizes or permits the default shall be liable to a fine not exceeding fifty thousand dollars.

Reservation of name.

18. The Registrar may, upon request and upon payment of the prescribed fee, reserve for 90 days a name for an intended company or for a company about to change its name.

General Provisions with respect to Articles

Effect of articles.

19.—(1) Subject to the provisions of this Act, the 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 articles.

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

Provision as to articles of companies limited by guarantee.

20.—(1) In the case of a company limited by guarantee and not having a share capital, every provision in the 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 unless such provision was in existence at the appointed day.

(2) For the purpose of the provisions of this Act relating to the articles of a company limited by guarantee and of this section, every provision in the 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 number of the shares or interests is not specified thereby.

Alterations of articles increasing liability to contribute to share capital not to bind existing members without consent.

21. Notwithstanding anything in the articles of a company, no member of the company shall be bound by an alteration made in the articles after the date on which he became a member, if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date to contribute to the share capital of, or otherwise to pay money to, the company:

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

Copies of articles to be given to members.

22.—(1) A company shall, on being so required by any member, send to him a copy of the articles, subject to payment of such sum as may be prescribed.

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

Membership of Company

Definition of member.

23.—(1) The following persons are members of a company and shall be entered as members on its register of members—

(a) persons who subscribe to the company's articles whose names shall, on the registration of the company, be entered in the company's register;

(b) the personal representatives of a deceased member and the trustee in bankruptcy of a bankrupt member;

(c) persons named as a principal account holder or subsidiary account holder, as the case may be, during any period in respect of which eligible securities carrying voting rights are entered against their names in the register of the licensed central securities depository for that company's shares.".

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

(3) For the purposes of this section—

"licensed central securities depository" means a company licensed under section 67B of the Securities Act to operate a central securities depository;

"principal account holder" means a person who maintains an account with a licensed central securities depository;

"subsidiary account holder" means the person in whose name a subsidiary account is opened and maintained by the principal account holder.".

Membership of holding company.

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

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

(3) This section shall not prevent—

(a) a subsidiary which is, on the appointed day, a member of its holding company; or

(b) a company which, being a member of another company, becomes a subsidiary of that 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) Subject to subsection (2), subsections (1) and (3) shall apply in relation to a nominee for a body corporate which is a subsidiary, as if references in subsections (1) and (3) to such a body corporate included references to a nominee for it.

(5) In relation to a company limited by guarantee or unlimited which is a holding company, the reference in this section to shares, whether or not it has a share capital, shall be construed as including a

reference to the interest of its members as such, whatever the form of that interest.

Private Companies

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

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

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

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

(d) prohibits any invitation to the public to deposit money for fixed periods or payable on call whether bearing or not bearing interest; and

(e) subject to the exceptions provided for in the Twelfth Schedule, prohibits any person other than the holder from having any interest in any of the company's shares. Twelfth Schedule.

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

(3) Subject to subsection (4), a private company shall not be obliged to file accounts unless, but shall be so obliged if, any of its shares is held by a body corporate, so, however, that any obligation to file accounts imposed upon a private company by virtue of this subsection shall be subject to the exceptions provided for in the Thirteenth Schedule. Thirteenth Schedule.

(4) In this Act the expression "file accounts" in relation to a company means to include in its annual return pursuant to subsection (3) of section 124 the documents and information mentioned in that subsection.

(5) The provisions of paragraph (b) of subsection (1) shall not apply to a company which is a foreign sales corporation operating under the Foreign Sales Corporations Act.

(6) For the purposes of this Act a public company is a company that is not a private company.

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

26.—(l) If a company, being a private company, alters its articles in such manner that they no longer include the provisions which, under section 25, are required to be included in the articles of a company in order to constitute it a private company, the company shall, as on the date of the alteration, cease to be a private company and shall, within a period of fourteen days after that date, deliver to the Registrar for registration a prospectus or a statement in lieu of prospectus in the form and containing the particulars set out in Part I of the Second Schedule and, in the cases mentioned in Part II of that Schedule, setting out the reports specified therein, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule:

Second Schedule.

Provided that a statement in lieu of prospectus need not be delivered under this subsection if within the period of fourteen days aforesaid a prospectus relating to the company which complies with the Third Schedule is issued and is delivered to the Registrar as required by section 40.

Third Schedule.

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

(3) If default is made in complying with subsection (1) or (2) the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

(4) Where a statement in lieu of prospectus delivered to the Registrar under subsection (1) includes any untrue statement, any person

who authorized the delivery of the statement in lieu of prospectus for registration shall be liable—

(a) on conviction on indictment, to imprisonment with or without hard labour for a term not exceeding two years or a fine not exceeding fifty thousand dollars, or both such fine and imprisonment; or

(b) on summary conviction before a Resident Magistrate, to imprisonment with or without hard labour for a term not exceeding three months or a fine not exceeding fifty thousand dollars or both such fine and imprisonment,

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

(5) For the purposes of this section—

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

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

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

27. Where the articles of a company include the provisions which under section 25 are required to be included in the articles of a company in order to constitute it a private company but default is made in complying with any of those provisions, the company shall cease to be entitled to the privileges and exemptions conferred on private companies under the provisions contained in subsection (3) of that section, and thereupon those provisions shall apply to the company as if it were not a private company:

Provided that the Court, on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may on the application of the company or any other person

interested and on such terms and conditions as may seem to the Court just and expedient, order that the company be relieved from such consequences as aforesaid.

Mutual Fund Companies

Mutual Fund Company.

27A.—(1) A "mutual fund company" means a company having a share capital and incorporated for the purpose of investing the moneys of its members for their mutual benefit, stating in its articles that it is a mutual fund, having the power to redeem or purchase for cancellation its shares without reducing its authorized share capital and is registered under the Securities Act as a mututal fund.

(2) A mutual fund company may, on the redemption of its own shares, repay the capital paid up on such shares out of its stated capital account or reserves, on such terms and in such manner and at such price as may be determined having regard to the asset values of shares as ascertained in accordance with the articles of the company.

(3) The redemption or purchase of its own shares by a mutual fund company shall not be taken as reducing its authorized share capital, and a mutual fund shall have the power to issue shares equal in aggregate value to the aggregate value of the shares so redeemed or purchased as if those shares had never been issued and the issuance of such shares under the power herein contained shall not be taken as increasing the amount of its issued share capital.

(4) The powers of a mutual fund company referred to in subsection (3) shall be exercisable by the directors of the mutual fund company or in accordance with the policies and procedures established by the directors.

(5) No shares of a mutual fund company shall be redeemed by the mutual fund company or purchased by another mutual fund company unless such shares are fully paid.

(6) A mutual fund company shall be exempt from the provisions of sections 41, 42, 43, and 46 of this Act in relation to a prospectus and the offering of shares for sale or subscription to the public; and sections 44, 45 and 47 of this Act and the provisions of the Securities

Act shall apply to such comapny in relation to a prospectus and the offering of shares for sale or subscription to the public.

(7) Sections 112 and 113 of this Act (inspection of register of members by public) shall not apply to a mutual fund company."

Contracts, etc.

Form of contracts.

28.—(1) Contracts on behalf of a company may be made as follows—

(a) a contract which if made between private persons would be by law required to be in writing and if made according to the law of Jamaica to be under seal, may be made on behalf of the company in writing under the common seal of the company;

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

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

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

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

Pre-incorporation contracts.

29.—(1) Except as provided in this section, a person who enters into an oral or written agreement or contract in the name of or on behalf of a company before it comes into existence or who purports to enter into such an agreement or contract, is personally bound by the agreement or contract and is entitled to the benefits of that agreement or contract.

(2) Within a reasonable time after a company comes into existence, it may, by any action or conduct signifying its intention to be bound thereby, adopt an oral or written agreement or contract made in its name or on its behalf before it came into existence.

(3) When a company adopts an agreement or contract under subsection (2)—

(a) the company is bound by the agreement or contract and is entitled to the benefits thereof as if the company had been in existence at the date of the contract and had been a party to it; and

(b) a person who purported to act in the name of the company or on its behalf ceases, except as provided in subsection (4), to be bound by or entitled to the benefits of the agreement or contract.

(4) Except as provided in subsection (5), whether or not an oral or written agreement or contract made before the company came into existence is adopted by the company, a party to the agreement or contract may apply to the court for an order—

(a) fixing obligations under the contract as joint or joint and several; or

(b) apportioning liability between or among the company and a person who purported to act in the name of the company or on its behalf,

and the court may, upon the application, make any order it thinks fit.

(5) If expressly so provided in an agreement or contract, a person who purported to act for or on behalf of a company before it came into existence is not in any event bound by the agreement or contract or entitled to the benefits thereof.

Bills of exchange and promissory notes.

30. A bill of exchange or promissory note shall be deemed to have been made, accepted or indorsed on behalf of a company if made, accepted or endorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority.

Execution of deeds abroad.

31.—(1) A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situated in the Island.

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

Company may have official seal for use abroad.

32.—(1) A company whose business requires or comprises the transaction of business out of the Island may, if authorized by its articles, have for use in any territory, district, or place not situated in the Island, an official seal, which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every territory, district or place where it is to be used.

(2) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

(3) A company having an official seal for use in any such territory, district or place may, by writing under its common seal, authorize any person appointed for the purpose in that territory, district or place to affix the official seal to any deed or other document to which the company is party in that territory, district or place.

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

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

Authentication of Documents

Authentication of documents.

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

PART II—*Share Capital and Debentures*

Minimum share capital.

34.—(1) A company registered as a public company having a share capital on its original incorporation shall not do business or exercise any borrowing powers unless the Registrar has issued it with a certificate under this section or the company is re-registered as a private company.

(2) The Registrar shall issue a company with such a certificate if, on an application by the company in the prescribed form, he is satisfied that the value of the company's allotted share capital is not less than the authorized minimum, and there is delivered to the Registrar a statutory declaration in accordance with subsection (3).

(3) The statutory declaration shall be in the prescribed form and be signed by a director or secretary of the company and shall—

(a) state that the value of the company's allotted share capital is not less than the authorized minimum;

(b) specify the amount paid up, at the time of the application, on the company's allotted share capital;

(c) specify the amount, or estimated amount, of the company's preliminary expenses and the persons by whom any of those expenses have been paid or are payable; and

(d) specify the amount or benefit paid or given, or intended to be paid or given, to any promoter of the company, and the consideration for the payment or benefit.

Authorized minimum.

35.—(1) In section 34 "authorized minimum" means five hundred thousand dollars or such other sum as the Minister may, by order, prescribe.

(2) An order under subsection (1) which increases the authorized minimum may—

(a) require any public company having an allotted share capital of which the value is less than the amount specified in the order as the authorized minimum to increase that value to not less than that amount or make application to be re-registered as a private company;

(b) make, in connection with any such requirement, provision for any of the matters for which provision is made by this Act relating to—

(i) a company's registration, re-registration or change of name;

(ii) payment for any share comprised in a company's capital and offers of shares in or debentures of a company to the public, including provision as to the consequences (whether in criminal law or otherwise) of a failure to comply with any requirement of the order; and

(c) contain such supplemental and transitional provisions as the Minister thinks appropriate, make different provisions for different cases and in particular, provide for any provision of the order to come into operation on different days for different purposes.

(3) An order under this section shall be subject to affirmative resolution.

Nature of shares.

36. Subject to section 37—

(a) from the appointed day shares in a company shall be issued without nominal or par value;

(b) a share with a nominal or par value issued before the appointed day shall be deemed to be a share without nominal or par value.

Election to retain par value shares.

37.—(1) An existing company may by ordinary resolution within six months of the appointed day, elect under this section to retain its existing shares with a nominal or par value and may continue to issue shares with a nominal or par value.

(2) An existing company which fails to make an election pursuant to subsection (1) , shall be deemed to have converted at the end of the six months period referred to in that subsection, its existing shares to shares without nominal or par value and any shares issued thereafter shall be issued without a nominal or par value.

(3) An existing company which makes an election pursuant to subsection (1) shall serve the Registrar with notice of that Resolution.

(4) Where an existing company makes an election pursuant to subsection (1)—

(a) the provisions of the repealed Act specified in subsection (5) shall, to the extent that they are relevant to the shares having a nominal or par value (and to that extent only), continue to apply to that company; and

(b) the provisions of this Act which provide for a determination of the value of shares without reference to a nominal or par value shall not apply to that company.

(5) The provisions of the repealed Act mentioned in subsection (4) (a) are as follows—

Section 56 (Application of premiums received on issue of shares);

Section 57 (Power to issue redeemable preference shares);

Section 58 (Power to issue shares at a discount);

Section 64 (Power of unlimited company to provide for reserve share capital on registration);

Section 66 (Special resolution for reduction of share capital);

Section 67 (Application to Court for confirming order objections by creditors, and settlement of list of objecting creditors);

Section 68 (Order confirming reduction and powers of Court on making such order);

Section 69 (Registration of order and minute of reduction);

TABLE A

Paragraph 11 (First and paramount lien);

Paragraphs 15—21 (Calls on shares).

(6) Where an existing company has made an election pursuant to subsection (1), that company shall at the end of eighteen months from the date of the election, be deemed to have converted its existing

shares to shares without a nominal or par value and any shares issued thereafter shall be shares issued without a nominal or par value.

Consideration.

38.—(1) A share may be paid for—

(a) in money; or

(b) in property or past service rendered for value that is the fair equivalent of the money that the company would have received if the share had been issued for money.

(2) In determining whether property or past service is the fair equivalent of money consideration, the directors may take into account reasonable charges and expenses of organization and reorganization, and payments for property and past services reasonably expected to benefit the company.

(3) For the purposes of this section "property" does not include a debt security other than—

(a) a debt security of a company as part of a merger, acquisition, amalgamation or scheme of arrangement, reorganization or reconstruction.

(b) promises to pay that are comprised of government securities or debt instruments that are guaranteed by a financial institution.

(4) Subject to this section, no allotment by a company of shares for a consideration other than cash shall be made unless—

(a) the directors of the company have passed a resolution that the allotment be made; and

(b) the resolution states the nature of the consideration, its value and the extent to which the shares to be issued in respect of it will be credited as paid up by virtue of it;

(5) Before passing a resolution pursuant to subsection (4) (a), the directors of the company shall—

(a) where the consideration consists of services, have a qualified accountant estimate the value of the services to the company in money terms; or

(b) in any other case, have the consideration valued by a qualified accountant, valuer or surveyor.

(6) No allotment as aforesaid shall be made unless, not more than one hundred and twenty days before the allotment, the accountant, or as the case may be, valuer or surveyor reports that in his opinion the value of the services to the company in money terms or the value of the other consideration in question is worth at least as much as the amount which will be credited as paid up on the shares to be allocated in respect of those services or that consideration.

(7) Where, pursuant to a pre-incorporation arrangement, consideration other than cash is made for any allotment, the nature and value of that consideration shall be stated in the company's articles and the allotment shall be approved by a general meeting of the company.

(8) In subsection (3) (b)—

"financial institution" means—

(a) a company licensed under the Banking Act, the Financial Institutions Act or the Securities Act; or

(b) a society registered under the Co-operative Societies Act or incorporated under the Building Societies Act;

"Government securities" include securities by a body corporate that is owned or controlled by the Government.

Stated capital accounts.

39.—(1) A company shall maintain a separate stated capital account for each class and series of shares issued by it.

(2) A company shall add to the appropriate stated capital account, the full amount of the consideration received by it for any shares issued by the company.

(3) A company shall not reduce its stated capital or any stated capital account except in the manner provided by this Act.

(4) A company shall not, in respect of a share issued by it, add to a stated capital account, an amount greater than the amount of the consideration received by the company for the share.

(5) When a company proposes to add an amount to a stated capital account maintained by it in respect of a class or series of shares,

that addition to the stated capital account shall be approved by special resolution if—

(a) bonus shares are not being apportioned rateably among all shareholders; and

(b) the effect of the bonus issue on voting rights is such that the holders of one class of shares assume control of the company or are able to pass a resolution which, prior to the bonus issue, they did not have sufficient voting rights to carry if the other shareholders were against it.

(6) Notwithstanding section 38 and subsection (2) of this section—

(a) when, in exchange for property, a company issues shares—

(i) to a body corporate that was an affiliate of the company immediately before the exchange; or

(ii) to a person who controlled the company immediately before the exchange,

the company, subject to subsection (4), may add to the stated capital accounts that are maintained for the shares of the classes or series issued, the amount agreed, by the company and the body corporate or person, to be the consideration for the shares so exchanged;

(b) when a company issues shares in exchange for shares of a body corporate referred to in paragraph (a) (i) the company may, subject to subsection (4), add to the stated capital accounts maintained for the shares of the classes or series issued, the whole or any part of the consideration it received in exchange; or

(c) when a company issues shares in exchange for shares of a body corporate that becomes the company's affiliate because of the exchange, the company may, subject to subsection (4), add to the stated capital accounts that are maintained for the classes or series issued, an amount that is not less than the amount set out, in respect of the acquired shares of

the body corporate, in the stated capital or equivalent accounts of the body corporate immediately before the exchange.

(7) When a company which was incorporated before the appointed day continues in existence after that date then, notwithstanding subsection (2), it is not required to add to a stated capital account, any consideration received by it before that date, unless the shares in respect of which the consideration is received are issued after that date.

Prospectus

Dating and registration of prospectus.

40.—(1) A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated.

(2) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless before the date of its issue—

(a) there has been delivered to the Registrar for the purpose of securing registration of the prospectus a copy thereof signed by every person who is named therein as director or proposed director of the company or by his agent authorized in writing; and

(b) pursuant thereto registration has been effected.

(3) Every prospectus shall state on the face of it that the prospectus has been registered as required by subsection (2).

(4) The Registrar shall not register any prospectus unless it is dated, and the copy thereof signed, in manner required by this section, and he may refuse to register a prospectus if—

(a) in any case where he considers that on the face of it the prospectus is misleading, within fourteen days of the delivery of the copy of the prospectus (or such longer period as may be prescribed) he by notice in writing informs the company or any other person who has delivered the copy of the prospectus pursuant to this section that in his opinion the prospectus is misleading for the reasons stated in the notice; or

(b) in any case where he considers it necessary or expedient for him to carry out an investigation as to whether the prospectus is misleading, he by notice in writing—

(i) within fourteen days of the delivery of the copy of the prospectus (or such longer period as may be prescribed) so informs the company or any other person as aforesaid; and

(ii) within six weeks of the delivery of the copy of the prospectus (or such longer period as may be prescribed) informs the company or any other person as aforesaid that in his opinion the prospectus is misleading for the reasons stated in the notice.

(5) In any case where the Registrar acting under the power given by paragraph (a) or (b) of subsection (4) refuses to register a prospectus, the company or any other person who has delivered the copy of the prospectus pursuant to this section may apply to the Court, which, after hearing the applicant and the Registrar, and such evidence as they may call, may either order the Registrar to register the prospectus or may dismiss the application.

(6) Whenever the Registrar has registered a prospectus under this section he shall in writing inform the company or any other person who has delivered the copy of the prospectus pursuant to this section of the fact of registration and the date thereof, and every prospectus issued by or on behalf of a company or in relation to an intended company shall show on its face, in addition to the date required by subsection (1), the date of registration.

(7) If a prospectus is issued without having been registered as required by this section, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable to a fine not exceeding five thousand dollars for every day from the date of the issue of the prospectus until it is withdrawn in a manner which either is reasonable having regard to all the circumstances of the case or accords with the reasonable directions of the Registrar.

Specific requirements as to particulars in prospectus. Third Schedule.

41.—(1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must state the matters specified in Part I of the Third Schedule and set out the reports specified in Part II of that Schedule.

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

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

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

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

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

(4) If any person acts in contravention of the provisions of subsection (3), he shall be liable to a fine not exceeding five thousand dollars for every day during which the contravention continues.

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

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

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

(c) the non-compliance or contravention was in respect of matters which in the opinion of the Court dealing with the case were

immaterial or was otherwise such as ought, in the opinion of that Court, having regard to all the circumstances of the case, reasonably to be excused:

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

Third Schedule.

(6) This section shall not apply to the issue, to existing members or debenture holders of a company, of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons, but subject as aforesaid, this section shall apply to a prospectus or a form of application whether issued on or with reference to the formation of a company or subsequently.

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

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

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

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

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

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

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

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

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

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

(3) If default is made in complying with the provisions of subsection (1), the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

Civil liability for statements in prospectus.

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

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

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

(c) every person who is a promoter of the company; and

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

Provided that where, under section 42, the consent of a person is required to the issue of a prospectus and he has given that consent, he shall not by reason of his having given it be liable under this subsection as a person who has authorized the issue of the prospectus except in respect of an untrue statement purporting to be made by him as an expert.

(2) No person shall be liable under subsection (1) if he proves—

(a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

(b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or

(c) that, after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto and gave reasonable public notice of the withdrawal and of the reason therefor; or

(d) that—

(i) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true; and

(ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe that the person making the statement was competent to make it and that person had given the consent required by section 42 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder; and

(iii) as regards every untrue statement purporting to be a statement made by an official person or

contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document:

Provided that this subsection shall not apply in the case of a person liable, by reason of his having given a consent required of him by section 42, as a person who has authorized the issue of the prospectus in respect of an untrue statement purporting to be made by him as an expert.

(3) A person who, apart from this subsection, would under subsection (1) be liable, by reason of his having given a consent required of him by section 42, as a person who has authorized 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 that section to the issue of the prospectus, he withdrew it in writing before delivery of a copy of the prospectus for registration; or

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

(c) that he was competent to make the statement and that he had reasonable ground to believe and did up to the time of the allotment of the shares or debentures, as the case may be, believe that the statement was true.

(4) Where—

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

(b) the consent of a person is required under section 42 to the issue of the prospectus and he either has not given that

consent or has withdrawn it before the issue of the prospectus,

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

Provided that a person shall not be deemed for the purposes of this subsection to have authorized the issue of a prospectus by reason only of his having given the consent required by section 42 to the inclusion therein of a statement purporting to be made by him as an expert.

(5) For the purposes of this section—

(a) "expert" has the same meaning as in section 42; and

(b) "promoter" means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company.

Criminal liability for misstatements in prospectus.

45.—(1) Where a prospectus issued after the appointed day includes any untrue statement, any person who authorized the issue of the prospectus shall be liable—

(a) on conviction on indictment, to imprisonment with or without hard labour for a term not exceeding two years, or a fine or both such imprisonment and fine; or

(b) on summary conviction before a Resident Magistrate, to imprisonment with or without hard labour for a term not exceeding three months, or a fine not exceeding one hundred thousand dollars, or both such imprisonment and fine,

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

(2) A person shall not be deemed for the purposes of this section to have authorized the issue of a prospectus by reason only of his having given the consent required by section 42 to the inclusion therein of a statement purporting to be made by him as an expert.

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

46.—(1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public—

(a) any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company; and

(b) all enactments and rules of law as to the contents of prospectuses and to liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses,

shall apply and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures, but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of misstatements contained in the document or otherwise in respect thereof.

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

(a) that an offer of the shares or debentures or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or

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

(3) Section 40 as applied by this section shall have effect as though the persons making the offer were persons named in a prospectus as directors of a company, and section 41 as applied by this section shall have effect as if it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus—

(a) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates; and

(b) the place and time at which the contract under which those shares or debentures have been or are to be allotted may be inspected.

(4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document aforesaid is signed on behalf of the company or firm by two directors of the company or not less than half of the partners, as the case may be, and any such director or partner may sign by his agent authorized in writing.

Interpretation of provisions relating to prospectuses.

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

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

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

Allotment

Prohibition of allotment unless minimum subscription received.

Third Schedule.

48.—(1) No allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which, in the opinion of the directors must be raised by the issue of share capital in order to provide for the matters specified in paragraph 4 of the Third Schedule has been subscribed, and the sum payable on application for the amount so stated has been paid to and received by the company.

(2) For the purposes of subsection (1), a sum shall be deemed to have been paid to and received by the company if a cheque for that

sum has been received in good faith by the company and the directors of the company have no reason for suspecting that the cheque will not be paid.

(3) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Act referred to as "the minimum subscription".

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

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

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

(6) This section shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to Registrar.

49.—(1) A company having a share capital which does not issue a prospectus on or with reference to its formation, or which has issued such a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures unless at least three days before the first allotment of either shares or debentures there has been delivered to the Registrar for registration a statement in lieu of prospectus, signed by every person who is named therein as a director or a proposed director of the company or by his agent authorized in writing, in the form and containing the particulars set out in Part I of the Fourth Schedule and, in the cases mentioned in Part II of that Schedule, setting out the reports specified therein, and those Parts shall have effect subject to the provisions contained in Part III of that Schedule.

Fourth Schedule.

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

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

(4) If a company acts in contravention of subsection (1) or (2), the company and every director of the company who knowingly authorizes or permits the contravention shall be liable to a fine not exceeding fifty thousand dollars.

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

(a) on conviction on indictment, to imprisonment with or without hard labour for a term not exceeding two years or a fine or both such imprisonment and fine; or

(b) on summary conviction before a Resident Magistrate, to imprisonment with or without hard labour for a term not exceeding three months or a fine not exceeding one hundred thousand dollars, or both such imprisonment and fine,

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

(6) For the purposes of this section—

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

(b) a statement shall be deemed to be included in a statement in lieu of prospectus if it is contained therein or in any report or

memorandum appearing on the face thereof or by reference incorporated therein.

Effect of irregular allotment.

50.—(1) An allotment made by a company to an applicant in contravention of the provisions of sections 48 and 49 shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, or, in any case where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment, and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

(2) If any director of a company knowingly contravenes, or permits or authorizes the contravention of, any of the provisions of sections 48 and 49 with respect to allotment, he shall be liable to compensate the company and the allottee respectively for any loss, damages, or costs which the company or the allottee may have sustained or incurred thereby:

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

Applications for, and allotment of shares and debenture.

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

(2) The beginning of the third day or such later time as aforesaid is hereafter in this Act referred to as "the time of the opening of the subscription lists".

(3) In subsection (1) the reference to the day on which the prospectus is first issued generally shall be construed as referring to the day on which it is first so issued as a newspaper advertisement:

Provided that, if it is not so issued as a newspaper advertisement before the third day after that on which it is first so issued in any other

manner, the reference shall be construed as referring to the day on which it is first so issued in any manner.

(4) The validity of an allotment shall not be affected by any contravention of the foregoing provisions of this section but, in the event of any such contravention, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

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

(6) An application for shares in or debentures of a company which is made in pursuance of a prospectus issued generally shall not be revocable until after the expiration of the third day after the time of the opening of the subscription lists, or the giving before the expiration of that third day, by some person responsible under section 44 for the prospectus, of a public notice having the effect under that section of excluding or limiting the responsibility of the person giving it.

Return as to allotments.

52.—(1) Whenever a company limited by shares or a company limited by guarantee and having a share capital makes any allotment of its shares, the company shall within one month thereafter deliver to the Registrar for registration—

(a) a return of the allotments stating the number of shares comprised in the allotment, the names, addresses and descriptions of the allottees, and the amount, if any, paid or due and payable on each share; and

(b) in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly

stamped, and a return stating the number of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(2) Where such a contract is not reduced to writing, the company shall within one month after the allotment deliver to the Registrar for registration the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing, and those particulars shall be deemed to be an instrument within the meaning of the Stamp Duty Act.

(3) If default is made in complying with this section, every officer of the company who is in default shall be liable to a fine not exceeding one thousand dollars for every day during which the default continues:

Provided that, in the case of default in delivering to the Registrar within one month after the allotment any document required to be delivered by this section, the company, or any person liable for the default, may apply to the Court for relief and the Court, if satisfied that the omission to deliver the document was accidental or due to inadvertence or that it is just and equitable to grant relief, may make an order extending the time for the delivery of the document for such period as the Court may think proper.

Commissions, etc.

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

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

(a) the payment of the commission is authorized by the articles; and

(b) the commission paid or agreed to be paid does not exceed ten per centum of the price at which the shares are issued or the amount or rate authorized by the articles, whichever is the less; and

(c) the amount or rate per centum of the commission paid or agreed to be paid is—

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

(ii) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and delivered before the payment of the commission to the Registrar for registration, and, where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice; and

(d) the number of shares which persons have agreed for a commission to subscribe absolutely is disclosed in manner aforesaid.

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

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

(4) A vendor to, promoter of, or other person who receives payment in money or shares from, a company shall have and shall be deemed always to have had power to apply any part of the money or

shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

(5) A company which contravenes any of the provisions of this section and every officer of the company who knowingly authorizes or permits the contravention shall be liable to a fine not exceeding fifty thousand dollars.

Statement in balance sheet, as to commissions.

54.—(1) Where a company has paid any sums by way of commission in respect of any shares or debentures, as the total amount so paid, or so much thereof as has not been written off, shall be stated in every balance sheet of the company until the whole amount thereof has been written off.

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

Construction of References to Offering Shares or Debentures to the Public

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

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

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

(a) a provision in a company's articles prohibiting invitations to the public to subscribe for shares or debentures shall not be

taken as prohibiting the making to members or debenture holders of an invitation which can properly be regarded as aforesaid; and

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

Issue of Redeemable Shares

Power to issue redeemable shares.

56.—(1) Subject to this section, a company may, if so authorized by its articles, issue shares which by the terms of the issue will be redeemed or, at the option of the company, may be redeemed.

(2) No redeemable shares may be issued at a time when there are no issued shares of the company which are not redeemable.

(3) Redeemable shares may not be redeemed unless they are fully paid and the terms of redemption must provide for payment on redemption.

(4) Notwithstanding anything in the company's articles—

(a) no shares issued as provided in subsection (1) shall be redeemed except out of the company's profits or revenue reserves which would otherwise be available for the payment of dividends, or out of proceeds of a fresh issue of shares made for the purpose of the redemption; and

(b) the minimum premium (if any) payable on redemption shall be provided out of the company's profits or revenue reserves which would otherwise be available for the payment of dividends or out of a fresh issue of shares before the shares are redeemed.

(5) If a company acts in contravention of this section, the company and every officer thereof who knowingly authorizes the contravention shall be liable to a fine not exceeding fifty thousand dollars.

Financing etc. of redemption.

57.—(1) Subject to this Act, redemption of shares may be effected on such terms and in such manner as may be provided by the company's articles.

(2) Where shares are redeemed under this section, the voting rights attaching to those shares shall be suspended and the amount of

the company's issued share capital shall be diminished by the value attributed to those shares in the stated capital account accordingly, but the redemption of shares by a company is not to be taken as reducing the amount of the company's authorized number of shares.

(3) Without prejudice to subsection (1), where a company is about to redeem shares, it has power to issue shares up to the value of the shares to be redeemed as if those shares had never been issued.

Power of company to purchase own shares.

58.—(1) Subject to subsection (4) and its articles, a company may purchase or otherwise acquire shares issued by it.

(2) Section 57 shall apply to the purchase by a company under this section of its own shares as it applies to the redemption of redeemable shares, save that the terms and manner of purchase need not be determined by the articles as required by section 57 (1).

(3) A company may not under this section purchase its shares if as a result of the purchase there would no longer be any member of the company holding shares other than redeemable shares.

(4) A company shall not make any payment to purchase or otherwise acquire shares issued by it unless a statutory declaration is made by the company's directors in accordance with this Act and lodged with the Registrar, to the effect that there are no reasonable grounds for believing that—

(a) the company is, or would after the payment be, unable to pay its liabilities as they become due; or

(b) the realizable value of the company's assets would, after the payment, be less than the aggregate of its liabilities and stated capital.

(5) The statutory declaration under subsection (4) shall be based on—

(a) the company's audited accounts made up no more than 12 months before the date of the statutory declaration;

(b) the company's unaudited accounts made up no more than 45 days before the date of the statutory declaration; and

(c) any other relevant facts of which the directors are aware.

(6) This section does not apply to a purchase or acquisition of a kind referred to in section 59.

(7) The directors of a company who willfully or recklessly make a declaration under subsection (4), a statement which is false in any material particular, shall be liable on summary conviction before a Resident Magistrate, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Alterative acquisition of Company's own shares.

59.—(1) Subject to subsection (3) and if permitted by its articles, a company may purchase or otherwise acquire shares issued by it—

(a) to settle or compromise a debt or claim asserted by or against the company;

(b) to eliminate fractional shares; or

(c) to fulfil the terms of a non-assignable agreement under which the company has an option or is obliged to purchase shares owned by an officer or an employee of the company.

(2) Section 57 shall apply to the purchase or other acquisition by a company under this section of its own shares as it applies to the redemption of redeemable shares, save that the terms and manner of purchase or other acquisition need not be determined by the articles as required by section 57 (1).

(3) A company may purchase or otherwise acquire shares issued by it to comply with an order under section 213.

(4) A company shall not make any payment to purchase or acquire under subsection (1) shares issued by it unless a statutory declaration is made by the company's directors and lodged with the Registrar for registration to the effect that there are no reasonable grounds for believing that—

(a) the company is, or would after the payment be, unable to pay its liabilities as they become due; or

(b) the realizable value of the company's assets would after the payment be less than the aggregate of its liabilities and the

amount required for payment on a redemption or in a winding up of all shares the holders of which have the right to be paid prior to or rateably with the holders of the shares to be purchased or acquired.

(5) The declaration under subsection (4) shall be based on—

(a) the company's audited accounts made up no more than 12 months before the date of the statutory declaration;

(b) the company's unaudited accounts made up no more than 45 days before the date of the statutory declaration; and

(c) any other relevant facts of which the directors are aware.

(6) A company may accept from any shareholder a share in the company surrendered to it as a gift, but may not extinguish or reduce a liability in respect of an amount unpaid on any such share, except in accordance with section 71.

(7) The directors of a company who wilfully or recklessly make a declaration under subsection (4), a statement which is false in any material particular, shall be liable on summary conviction before a Resident Magistrate, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Notice to shareholders of purchase by company of own shares.

60. A company shall, within thirty days of the purchase of any of its issued shares, notify its shareholders of—

(a) the number of shares it has purchased;

(b) the names of the shareholders from whom it has purchased the shares;

(c) the price paid for the shares;

(d) if the consideration was other than cash, the nature of the consideration and the value attributed to it; and

(e) the balance, if any, remaining due to shareholders or those shareholders from whom it purchased the shares.

Pre-emptive rights.

61.—(1) If the articles so provide, no shares or a class of shares may be issued unless the shares have first been offered to the shareholders of the company holding shares of that class.

(2) The shareholders mentioned in subsection (1) have a pre-emptive right to acquire the offered shares in proportion to their holding at such price and on such terms as those shares are to be offered to others.

(3) Notwithstanding that the articles provide the pre-emptive right referred to in subsection (1), the shareholders of the company have no pre-emptive right in respect of shares to be issued by the company—

(a) for consideration other than cash;

(b) pursuant to the exercise of conversion privileges, options or rights previously granted by the company.

Power to issue redeemable preference shares.

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

Provided that—

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

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

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

(d) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall out of profits that would otherwise have been available for dividend be transferred to a reserve fund to be called "the capital redemption reserve fund", a sum equal to the amount of the shares to be redeemed, and the provisions of this Act relating to the reduction of a company's share capital shall, except as provided in this section, apply as if the capital redemption reserve fund were the company's paid up share capital.

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

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

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

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

(5) The capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company in paying up the company's unissued shares to be issued to the company's members as fully paid bonus shares.

(6) If a company acts in contravention of this section, the company and every officer of the company who knowingly authorizes or permits the contravention shall be liable to a fine not exceeding fifty thousand dollars.

Miscellaneous Provisions as to Share Capital

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

63. A company, if so authorized by its articles, may do any one or more of the following—

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

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

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

Reserve liability of limited company.

64. 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 the portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

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

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

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

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

(c) convert all or any of its paid up shares into stock, and 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 articles, so, however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

(e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The powers conferred by this section must be exercised by the company in general meeting.

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

Notice to Registrar of consolidation of share capital, conversion of shares into stock etc.

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

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

(b) converted any shares into stock; or

(c) re-converted stock into shares; or

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

(e) redeemed any redeemable preference shares; or

(f) cancelled any shares, otherwise than in connection with a reduction of share capital under section 71,

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

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

Notice of increase of share capital.

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

(2) The notice to be given as aforesaid shall include such particulars as may be prescribed with respect to the classes of shares affected and the conditions subject to which the new shares have been or are to be issued, and there shall be forwarded to the Registrar together with the notice and a copy of the resolution authorizing the increase.

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

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

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

(a) increase the amount of its share capital by increasing the amount of its shares, subject to the condition that no part of

the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up;

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

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

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

Provided that—

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

(b) no such payment, whether authorized by the articles or by special resolution, shall be made without the previous sanction of the Minister;

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

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

(e) the rate of interest shall in no case exceed six *per centum* per annum or such other rate as may for the time being be prescribed by the Minister;

(f) the accounts of the company shall show the share capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate.

(2) If default is made in complying with proviso (f) to subsection (1), the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

Redemption or cancellation of shares under Employees Share Ownership Plan Act.

70.—(1) A company limited by shares may, if so authorized by its articles, purchase its own shares out of profits available for distribution or out of a fresh issue of shares for that purpose and in accordance with the provisions of this section.

(2) Where a company, in the operation of an employee share ownership plan approved under the Employee Share Ownership Plan Act—

(a) purchases its shares and such shares are thereupon either cancelled or transferred to the trustees of the plan; or

(b) otherwise cancels its shares,

in the exercise of the company's rights or obligations under that Act or any plan thereunder, such purchase or cancellation of its shares by the company shall not be deemed to be a reduction of the company's capital.

(3) The purchase of shares in accordance with this section shall not be taken as reducing the amount of the company's stated capital.

Reduction of Share Capital

Reduction of stated capital.

71.—(1) Subject to subsection (3), a company may by special resolution—

(a) extinguish or reduce a liability in respect of an amount unpaid on any shares;

(b) reduce its stated capital by an amount that is not represented by realizable assets; or

(c) return to its shareholders any of its assets which are in excess of the wants of the company.

(2) The stated capital of a company shall be reduced in accordance with any resolution under subsection (1) which reduces or has the effect of reducing the stated capital.

(3) A company shall not reduce its stated capital under subsection (1) (a) or return assets pursuant to subsection (1) (c) unless a statutory declaration is made by the directors of the company to the effect that there were no reasonable grounds for believing—

(a) that after the reduction or, as the case may be, return, the company would be unable to pay its liabilities as they become due; or

(b) that the realizable value of the company's assets would thereby be less than the aggregate of its liabilities and the stated capital remaining after the reduction in accordance with subsection (2).

(4) The declaration under subsection (3) shall be based on—

(a) the company's audited accounts made up no more than 12 months before the date of the statutory declaration;

(b) the company's unaudited accounts made up no more than 45 days before the date of the statutory declaration; and

(c) any other relevant facts of which the directors are aware.

(5) A company shall at two intervals at least seven days apart, give notice in a daily newspaper circulating in the Island of—

(a) any reduction of its stated capital pursuant to subsection (l) (b); or

(b) any intention to reduce its stated capital under subsection (l) (a) or (c).

(6) A company shall not return assets to shareholder under subsection (1) (c) until the expiration of one hundred and eighty days after the publication of the second notice required under subsection (5).

(7) A director of a company who wilfully or recklessly makes, in any declaration under subsection (3), a statement which is false in a

material particular shall be liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Effect of redemption, purchase, etc.

72.—(1) Subject to subsection (2), no redemption, purchase, acquisition or forfeiture by a company of its shares nor the cancellation of shares so redeemed, purchased, acquired or forfeited shall operate to reduce the authorized number of shares of the company.

(2) The stated capital of a company shall be reduced by the amount by which a redemption of redeemable shares is made out of a fresh issue of shares made for the purpose of the redemption not more than twelve months before the date of the redemption.

(3) Subject to this section, a company may not reduce its stated capital except as provided in section 71.

(4) The provisions of section 71 shall not apply to a redemption, purchase, acquisition or forfeiture.

Variation of Shareholders' Rights

Rights of holders of special classes of shares.

73.—(1) If in the case of a company the share capital of which is divided into different classes of shares—

(a) provision is made by the articles for authorizing the variation of the rights attached to any class of shares in the company, subject to—

(i) the consent of any specified proportion of the holders of the issued shares of that class; or

(ii) the sanction of a resolution passed at a separate meeting of the holders of those shares; and

(b) in pursuance of the said provision the rights attached to any such class of shares are at any time varied,

the holders of not less in the aggregate than fifteen *per centum* of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the Court to have the variation cancelled, and, where any such application is made,

the variation shall not have effect unless and until it is confirmed by the Court.

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

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

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

(5) The company shall within fifteen days after the making of an order by the Court on any such application forward a copy of the order to the Registrar, and, if default is made in complying with this provision, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

(6) In this section the expression "variation" includes abrogation, and for the purposes of this Act any resolution of a company the implementation of which would have the effect of diminishing the proportion of the total votes exercisable at a general meeting of the company by the holders of the existing shares of a class, or of reducing the proportion of the dividends or distributions payable at any time to the holders of the existing shares of a class, shall be deemed to be a variation of the rights of that class.

Transfer of Shares and Debentures, Evidence of Title, etc.

Nature and numbering of shares.

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

(2) Each share in a company having a share capital shall be distinguished by its appropriate number.

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

75.—(1) Notwithstanding anything in the articles of a company, it shall not be lawful for the company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company:

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

(2) If a company contravenes the provisions of this section the company and every officer of the company who knowingly authorizes or permits the contravention shall be liable to a fine not exceeding fifty thousand dollars.

Registration of transfer on request of transferor.

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

Notice of refusal to register transfer.

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

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding two thousand dollars for every day during which the default continues.

Certification of transfers.

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

(2) Where any person acts on the faith of a false certification by a company made negligently, the company shall be under the same liability to him as if the certification had not been made fraudulently.

(3) For the purposes of this section—

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

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

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

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

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

(i) it purports to be authenticated by his signature or initials (whether handwritten or not); and

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

Duties of company with respect to issue of certificates.

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

(2) In subsection (1) "transfer" means a transfer duly stamped and otherwise valid, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.

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

(4) If any company on whom a notice has been served requiring the company to make good any default in complying with the provisions of subsection (1) fails to make good the default within ten days after the service of the notice, the Court may, on the application of the person entitled to have the certificates or the debentures delivered to him, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order, and any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company responsible for the default.

Certificate evidence of title.

80. A certificate, under the common seal of the company, specifying any shares held by any member, shall be *prima facie* evidence of the title of the member to the shares.

Evidence of grant of probate.

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

Issue and effect of share warrants to bearer.

82.—(1) A company limited by shares, if so authorized by its articles, may, with respect to any fully paid up shares, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the shares included in the warrant.

(2) Such a warrant as aforesaid is in this Act termed a "share warrant".

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

Penalty for personation of shareholders.

83. If any person falsely and deceitfully personates any owner of any share or interest in any company, or of any share warrant or coupon, issued in pursuance of this Act, and thereby obtains or endeavours to obtain any such share or interest or share warrant or coupon, or receives or endeavours to receive any money due to any such owner, as if the offender were the true and lawful owner, he shall be guilty of a felony, and shall on conviction on indictment be liable to be imprisoned with or without hard labour for fourteen years or to a fine.

Special Provisions as to Debentures

Register of debenture holders.

84.—(1) A company which issues or has issued debentures shall keep, in one or more books, a register of holders of debentures and shall enter therein the following particulars—

(a) the names and addresses of the debenture holders;

(b) the debentures held by each debenture holder, together with the amount paid or agreed to be considered as paid thereon, and any other prescribed particulars;

(c) the date at which each person was entered in the register as a debenture holder; and

(d) the date at which any person ceased to be a debenture holder:

Provided that—

(i) in the application of paragraph (b) to debenture stock and holders thereof it shall not be necessary for the register to show the amount paid or agreed to be considered as paid on such stock; and

(ii) nothing in this subsection shall apply in relation to debentures which are transferable by delivery.

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

Provided that—

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

(b) if the company arranges with some other person for the making up of the register to be undertaken on behalf of the

company by that other person, it may be kept at the office of that other person at which the work is done,

so, however, that it shall not be kept at a place outside the Island.

(3) Every company shall send notice to the Registrar of the place where its register of holders of debentures is kept and of any change in that place:

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

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

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

85. Where, by virtue of proviso (b) to subsection (2) of section 84, the register of holders of debentures is kept at the office of some person other than the company, and by reason of any default of his the company fails to comply with subsection (3) of that section or section 86 or with any of the requirements of this Act as to the production of the register, that other person shall be liable to the same penalties as if he were an officer of the company who was in default, and the power of the Court under subsection (6) of section 86 shall extend to the making of orders against that other person and his officers and servants.

Inspection of register of debenture holders.

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

(2) For the purposes of subsection (1), a register shall be deemed to be duly closed if closed in accordance with provisions contained in the articles or in the debentures or, in the case of debenture stock, in the stock certificates, or in the trust deed or other document

securing the debentures or debenture stock, during such period or periods, not exceeding in the whole thirty days in any year, as may be therein specified.

(3) Any person may require a copy of the register of holders of debentures of the company or any part thereof on payment of twenty dollars for every page required to be copied.

(4) A copy of any trust deed or other document securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment of twenty dollars for every page required to be copied.

(5) If inspection is refused, or a copy is refused or not forwarded, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

(6) Where a company is in default as aforesaid, the Court may by order compel an immediate inspection of the register or direct that the copies required shall be sent to the person requiring them.

Application to registers of debenture holders of certain provisions relating to registers of members.

87.—(1) The provisions of section 115 (except subsection (4)) and sections 116 and 117 shall apply to and in relation to registers of holders of debentures as they apply to and in to relation to registers of members.

(2) The provisions of sections 118 and 119 shall apply to and in relation to the keeping by companies (whether having a share capital or not) whose business comprise the transaction of business in countries outside the Island of branch registers of holders of debentures resident outside the Island and the registering of holders of debentures therein as they apply to and in relation to the keeping by companies referred to in section 118 of branch registers of members so resident and the registering of members therein, so, however, that—

(a) so much of subsection (2) of section 119 as relates to advertisement before closing a register shall not apply; and

(b) there shall be substituted for the reference in subsection (7) of section 119 to proviso (b) to subsection (2) of section 109 a reference to proviso (b) to subsection (2) of section 84.

Liability of trustees for debenture holders.

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

(2) Subsection (1) shall not invalidate—

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

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

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

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

(3) Subsection (1) shall not operate—

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

(b) to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force.

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

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

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

Perpetual debentures.

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

Power to re-issue redeemed debentures in certain cases.

90.—(1) Where either before or after the appointed day a company has redeemed any debentures previously issued, then—

(a) unless any provision to the contrary whether express or implied, is contained in the articles or in any contract entered into by the company; or

(b) unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled,

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

(2) On a re-issue of redeemed debentures the person entitled to the debentures shall have, and shall be deemed always to have had, the same priorities as if the debentures had never been redeemed.

(3) Where a company has power to re-issue debentures which have been redeemed, particulars with respect to the debentures which can be so re-issued shall be included in every balance sheet of the company.

(4) Where a company has either before or after the appointed day deposited any of its debentures to secure advances from time to

time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(5) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, whether the re-issue or issue was made before or after the appointed day, shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued:

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

(6) Where any debentures which have been redeemed before the appointed day are re-issued subsequently to that date, the re-issue of the debentures shall not prejudice any right or priority which any person would have had under or by virtue of any mortgage or charge created before that date.

Specific performance of contracts to subscribe for debentures.

91. 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.

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

92.—(1) Where either a receiver is appointed on behalf of the holders of any debentures of the company secured by a floating charge, or possession is taken by or on behalf of those debentures of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding up are under the provisions of Part V relating to preferential payments to be paid in priority to all other debts, shall be paid out of any assets

coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

(2) The periods of time mentioned in the said provisions of Part V shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.

(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.

PART III—*REGISTRATION OF CHARGES*

Registration of Charges with Registrar

Registration of charges.

93.—(1) Every charge created after the appointed day by a company registered in the Island, being a charge to which this section applies shall, so far as any security on the company's property or undertaking is conferred thereby, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge, together with the original or a copy certified in the prescribed manner of the instrument, if any, by which the charge is created or evidenced, are delivered to or received by the Registrar for registration in the manner required by this Act prior to the commencement of the winding up of the company, but without prejudice to any contract or obligation for repayment of the money secured; and when a charge becomes void under this section, the money secured thereby shall immediately become payable.

(2) Where—

(a) a charge to which subsection (3) applies is registered within twenty-one days of its creation, that charge shall for the purposes of priority (and subject to any agreement altering priorities) rank in priority to any charge created after it;

(b) a charge to which subsection (3) applies is created and is not registered until after twenty-one days after its creation, that charge shall for purposes of priority (and subject to any agreement altering priorities) be deemed to have been created on the date of registration.

(3) This section applies to the following charges—

(a) a charge for the purpose of securing any issue of debentures;

(b) a charge on uncalled share capital of the company;

(c) a charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale;

(d) a charge on land, wherever situated, or any interest therein but not including a charge for any rent or other periodical sum issuing out of land;

(e) a charge on book debts of the company;

(f) a floating charge on the undertaking or property of the company;

(g) a charge on calls made but not paid;

(h) a charge on a ship or any share in a ship;

(i) a charge on goodwill, on a patent or a licence under a patent, on a trade mark or on a copyright or a licence under a copyright.

(4) Where a charge is created outside of the Island comprising property situated outside the Island, for the purpose of calculating the period for registration, the twenty-one days shall commence after the date on which the instrument or copy would, in due course of post, and if dispatched with due diligence, have been received in the Island.

(5) Where a charge is created in the Island but comprises property outside the Island, the instrument creating or purporting to create the charge or the copy thereof, as the case may be, may be sent for registration under this section notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situated.

(6) Where a negotiable instrument has been given to secure the payment of any book debts of a company the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of this section be treated as a charge on those book debts.

(7) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it shall for the purposes of this section be sufficient if there are delivered to or received by the Registrar within twenty-one days after the execution of the deed containing the charge or if there is no such deed, after the execution of any debentures of the series, the following particulars—

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

(b) the dates of the resolutions authorizing the issue of the series and the date of the covering deed, if any, by which the security is created or defined; and

(c) a general description of the property charged; and

(d) the names of the trustees, if any, for the debenture holders,

together with a copy of the deed containing the charge, certified to be a true copy by an attorney-at-law or an officer of the company, or, if there is no such deed, one of the debentures of the series:

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the Registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

(8) Where any commission, allowance or discount has been paid or made either directly or indirectly by a company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be sent for registration under this section shall include particulars as to the amount or rate *per centum* of the commission, discount, or allowance so paid or made, but omission to do this shall not affect the validity of the debentures issued:

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

(9) If default is made in complying with subsection (1), the company and every officer thereof who is in default shall be liable to a fine not exceeding fifty thousand dollars.

(10) In this Part the expression "charge" includes mortgage.

Effect of registration.

94.—(1) Where a charge requiring registration under this Act is created then—

(a) the registration of that charge in accordance with this Act shall constitute notice to the world of the existence of that charge;

(b) where a subsequent charge is registered in accordance with this Act in respect of the same property or undertaking and written notice thereof is given to the prior chargee, the amount secured by the prior charge shall not be increased to the prejudice of the later charge notwithstanding any provision to the contrary contained in the document creating the earlier charge.

(2) Where the amount secured by a charge is increased after the charge is registered, the particulars of the increase shall be sent to the Registrar for registration in the prescribed manner.

Duty of company to register charges created by company.

95.—(1) It shall be the duty of a company to send to the Registrar for registration the particulars of every charge created by the company and of the issues of debentures of a series requiring registration under section 93, but registration of any such charge may be effected on the application of any person interested therein.

(2) Where registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the Registrar on the registration.

(3) If any company makes default in sending to the Registrar for registration the particulars of any charge created by the company, or of the issues of debentures of a series requiring registration as aforesaid, then, unless the registration has been effected on the application of some other person, the company and every officer of the company

who is in default shall be liable to a default fine not exceeding fifty thousand dollars.

Duty of company to register charges existing on property acquired.

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

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

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

Registrar to keep register of charges.

97.—(1) The Registrar shall keep, with respect to each company, a register in the prescribed form of all the charges requiring registration under this Part and shall, on payment of the prescribed fee, enter in the register with respect to such charges the following particulars—

(a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are specified in subsection (7) of section 93;

(b) in the case of any other charge—

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

(ii) the amount secured by the charge; and

(iii) short particulars of the property charged; and

(iv) the persons entitled to the charge.

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

(3) The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee for each inspection.

(4) The Registrar shall keep a chronological index, in the prescribed form and with the prescribed particulars, of the charges entered in the register.

Indorsement of certificate of registration on debentures.

98.—(1) The company shall cause a copy of every certificate of registration given under section 97 to be indorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the charge so registered:

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

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

Entries of satisfaction and release of property from charge.

99. The Registrar, on evidence being given to his satisfaction with respect to any registered charge—

(a) that the debt for which the charge was given has been paid or satisfied in whole or in part; or

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

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

Rectification of register of charges.

100. The Court, on being satisfied that the omission or mis-statement of any particular with respect to any such charge or in a memorandum of satisfaction was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the Court just and expedient, order that the omission or mis-statement shall be rectified.

Registration of enforcement of security.

101.—(1) If any person obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under any powers contained in any instrument, he shall, within seven days from the date of the order or of the appointment under the said powers, give notice of the fact to the Registrar and the Registrar shall, on payment of the prescribed fee enter the fact in the register of charges.

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

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

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

Copies of instruments creating charges to be kept by company.

102.—(1) Every company shall cause a copy of every instrument creating any charge requiring registration under this Part to be certified in the prescribed manner and kept at the registered office of the company:

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

(2) If default is made by a company in complying with subsection (1), the company and every officer of the company who is in default shall be liable to a fine not exceeding two thousand dollars.

Company's register of charges.

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

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

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

104.—(1) The copies of instruments creating any charge requiring registration under this Part with the Registrar, and the register of charges kept in pursuance of section 103 shall be open during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day shall be allowed for inspection) to the inspection of any creditor or member of the company without fee, and the register of charges shall also be open to the inspection of any other person on payment of such fee, not exceeding fifty dollars for each inspection, as the company may specify.

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

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

Application of Part III to Companies incorporated outside the Island

Application of Part III to charges created, and charges on property subject to charges acquired, by company incorporated outside the Island.

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

PART IV—MANAGEMENT AND ADMINISTRATION

Registered Office and Name

Registered office of company.

106.—(1) A company shall have a registered office to which all communications and notices may be addressed.

(2) Notice of the situation of the registered office shall be given at the date of the company's incorporation or within seven days of any change in such situation, as the case may be, to the Registrar, who shall record the same. The inclusion in the annual return of a company of a statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by this subsection.

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

Publication of name by company.

107.—(1) Every company—

(a) shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible;

(b) shall have its name engraven in legible characters on its seal;

(c) shall have its name mentioned in legible characters in all business letters of the company and in all notices and other

official publications of the company, and in all bills of exchange, promissory notes, indorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts and letters of credit of the company.

(2) If a company does not paint or affix its name in manner directed by this Act, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars, and if a company does not keep its name painted or affixed in manner so directed, the company and every officer of the company who is in default shall be liable to a fine not exceeding two thousand dollars for every day during which the default continues.

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

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

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

(b) issues or authorizes the issue of any business letter of the company or any notice or other official publication of the company, or signs or authorizes to be signed on behalf of the company any bill of exchange, promissory note, indorsement, cheque or order for money or goods wherein its name is not mentioned in the manner aforesaid; or

(c) issues or authorizes the issue of any bill of parcels, invoice, receipt or letter of credit of the company wherein its name is not mentioned in the manner aforesaid,

he shall be liable to a fine not exceeding fifty thousand dollars, and shall further be personally liable to the holder of the bill of exchange, promissory note, cheque or order for money or goods for the amount thereof unless it is duly paid by the company.

Restriction on commencement of business.

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

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

(b) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; and

(c) there has been delivered to the Registrar for registration a statutory declaration by the secretary or one of the directors, in the prescribed form, that the conditions specified in paragraphs (a) and (b) have been complied with.

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

(a) there has been delivered to the Registrar for registration a statement in lieu of prospectus; and

(b) 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 payable in cash;

(c) there has been delivered to the Registrar for registration a statutory declaration by the secretary or one of the directors, in the prescribed form, that paragraph (b) has been complied with.

(3) The Registrar shall, on the delivery to him of the statutory declaration, and, in the case of a company which is required by this

section to deliver a statement in lieu of prospectus, of such a statement, certify that the company is entitled to commence business; and that certificate shall be conclusive evidence that the company is so entitled.

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

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

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

(7) Nothing in this section shall apply to a private company.

Register of Members

Register of members.

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

(a) the names and addresses and the occupation, if any, of the members, and in the case of a company having a share capital a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member;

(b) the date at which each person was entered in the register as a member;

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

Provided that where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the register shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares specified in paragraph (a).

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

Provided that—

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

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

so, however, that it shall not be kept at a place outside the Island.

(3) Every company shall send notice to the Registrar of the place where its register of members is kept and of any change in that place:

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

(4) Where a company makes default in complying with subsection (1) or makes default for fourteen days in complying with subsection (3), the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

Index of members of company.

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

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

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

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

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

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

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

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

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

(2) The bearer of a share warrant shall, subject to the articles of the company, be entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members.

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

(4) Until the warrant is surrendered, the particulars specified in subsection (1) shall be deemed to be the particulars required by this Act to be entered in the register of members, and, on the surrender, the date of the surrender must be entered.

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

Inspection of register of members and index of names.

112.—(1) The register of members, commencing from the date of the registration of the company, and the index of the names of members, except when the register is closed under the provisions of this Act, shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection

of any member without charge and of any other person on payment of fifty dollars, or such less sum as the company may specify, for each inspection.

(2) Any member or other person may request a copy of the register, or of any part thereof, on payment of fifty dollars, or such less sum as the company may specify, for every hundred words or fractional part thereof required to be copied. The company shall cause any copy so required by any person to be sent to that person within a period of ten days commencing on the day next after the day on which the request is received by the company.

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

(4) In the case of any such refusal or default, the Court may by order compel an immediate inspection of the register and index or direct that the copies required shall be sent to the persons requiring them.

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

113. Where, by virtue of proviso (b) to subsection (2) of section 109 the register of members is kept at the office of some person other than the company, and by reason of default of that other person the company fails to comply with subsection (3) of that section, subsection (3) of section 110 or subsection (1) of section 112 or with any requirements of this Act as to the production of the register, that other person shall be liable to the same penalties as if he were an officer of the company who was in default, and the power of the Court under subsection (3) of section 112 shall extend to the making of orders against that other person and his officers and servants.

Power to close register.

114. A company may, on giving notice by advertisement in a daily newspaper printed and circulating in the Island close the register of members for any time or times not exceeding in the whole thirty days in each year.

Power of Court to rectify register.

115.—(1) If—

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

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

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

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

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

(4) In the case of a company required by this Act to send a list of its members to the Registrar, the Court when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the Registrar.

Trusts not to be entered on register.

116. No notice of any trust, express, implied, or constructive, shall be entered on the register, or be receivable by the Registrar, in the case of companies registered in the Island.

Register to be evidence.

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

Branch Register

Power for company to keep branch register.

118.—(1) A company having a share capital which carries on business in any country outside the Island may cause to be kept in that part of any such country in which it transacts business, a register of members resident in such part (in this Act called a "branch register").

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

(3) If default is made in complying with subsection (2), the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

Regulations as to branch register.

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

(2) The branch register shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement before closing the register shall be inserted in a newspaper circulating in the district where the branch register is kept, and that any competent court in the country where the register is kept may exercise the same jurisdiction of rectifying the register as is under this Act exercisable by the Court.

(3) The company shall transmit to its registered office a copy of every entry in its branch register as soon as may be after the entry is made, and shall cause to be kept at the place where the company's principal register is kept, duly entered up from time to time, a duplicate of its branch register and every such duplicate shall, for all the purposes of this Act, be deemed to be part of the principal register.

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

(5) A company may discontinue to keep a branch register, and thereupon all entries in that register shall be transferred to some other branch register kept by the company in the country concerned or to the principal register.

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

(7) If default is made in complying with subsection (3)—

(a) the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars; and

(b) where, by virtue of proviso (b) to subsection (2) of section 109, the principal register is kept at the office of some person other than the company and by reason of any default of that other person the company fails to comply with the requirements of subsection (3) of this section relating to the keeping of a duplicate of its branch register, he shall be liable to the same penalty as if he were an officer of the company who was in default.

(8) An instrument of transfer of a share registered in a branch register shall be deemed to be a transfer of property situated out of the Island, and unless executed in this Island, shall be exempt from stamp duty chargeable in the Island.

Provisions as to branch registers of companies incorporated abroad kept in the Island.

120. If by virtue of the law in force in any country, outside the Island companies incorporated under that law have power to keep in the Island branch registers of their members resident in the Island, the Minister may by order direct that sections 112 and 115 shall, subject to any modifications and adaptations specified in the order, apply to and in relation to any such branch registers kept in the Island as they apply to and in relation to the registers of companies within the meaning of this Act.

Annual Returns

Duty to deliver annual returns.

121.—(1) Every company shall deliver to the Registrar successive annual returns each of which is made up to a date not later than the date which is from time to time the company's return date, that is—

(a) the anniversary of the company's incorporation; or

(b) if the company's last return delivered in accordance with this section was made up to a different date, the anniversary of that date.

(2) Each return shall—

(a) be in the prescribed form as set out in the Fifth Schedule;

(b) contain the information required by or under the provisions of sections 122, 123 and 124 and shall be delivered to the Registrar within 28 days after the date to which it is made up.

(3) If a company fails to deliver an annual return in accordance with this section—

(a) that company shall be liable on default to a penalty of one hundred dollars for each day the default continues, subject to a maximum penalty of ten thousand dollars; and

(b) such penalty shall be payable to the Registrar.

Annual Return to be made by a company having share.

122.—(1) Every company having a share capital shall make a return stating the date to which it is made up and containing a list of all persons who, on the date of the return, are members of the company, and of all persons who have ceased to be members since the date of the last return or, in the case of the first return, of the incorporation of the company.

(2) The list shall—

(a) state the names, addresses and occupations of all past and present members therein mentioned;

(b) state the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return or, in the case of the first return, of the incorporation of the company by persons who have ceased to be members respectively and the dates of registration of the transfers; and

(c) if the names therein are not arranged in alphabetical order, have annexed to it an index sufficient to enable the name of any person in the list to be readily found:

Provided that, where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the list

shall state the amount of stock held by each of the existing members instead of the amount of shares and the particulars relating to shares hereinbefore required.

(3) The return shall contain with respect to the registered office of the company, registers of members and debenture holders, shares and debentures indebtedness, and persons who are directors of the company, the matters specified in Part I of the Fifth Schedule and shall be in accordance with the form set out in Part II of that Schedule or as near thereto as circumstances permit.

(4) 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.

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

123.—(1) Every company not having a share capital shall make a return stating—

(a) the date to which it is made up;

(b) the address of the registered office of the company;

(c) all particulars with respect to the persons who at the date of the return are the directors of the company as are by this Act required to be contained with respect to directors on the register of directors of a company.

(2) There shall be annexed to the return a statement containing particulars of the total indebtedness of the company in respect of all mortgages and charges which are required to be registered under this Act.

General provisions as to annual return.

124.—(1) The annual return shall be contained in a separate part of the register of members.

(2) Section 111 shall apply to the annual return as it applies to the register of members.

(3) The annual return shall, in the case of every company which is not a private company and every private company which is obliged to

file accounts, include a written copy, certified by a director, the manager or secretary of the company to be a true copy, of the last balance sheet and profit and loss account laid before the company in general meeting, including every document required by law to be annexed thereto, together with a copy of the report of the auditors thereon certified as aforesaid, and if any such balance sheet is in a foreign language, there shall also be annexed to it a translation thereof in English, certified in the prescribed manner to be a correct translation:

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

Certificates to be sent by private company with annual return.

125. A private company shall send with the annual return required by section 121—

(a) a certificate signed both by a director and by the secretary of the company that the company has not since the date of the last return, or since, in the case of a first return, the date of the incorporation of the company or, in the case of an existing company which became a private company, the date on which it became a private company, issued any invitation to the public to subscribe for any shares or debentures of the company or to deposit money for fixed periods whether bearing or not bearing interest;

(b) where the annual return discloses the fact that the number of members of the company exceeds twenty, also a certificate so signed that the excess consists wholly of persons who under paragraph (b) of subsection (1) of section 25 are not to be included in reckoning the number of twenty;

(c) a certificate signed by the persons aforesaid that, to the best of their knowledge and belief, no person other than the holder thereof except in cases provided for in the Twelfth Schedule has had any interest in any of the company's shares since the

Twelfth Schedule.

date of the last return or since, in the case of a first return, the date of the incorporation of the company or, in the case of an existing company which became a private company, the date on which it became a private company;

(d) where the company claims to be a private company which is not obliged to file accounts, a certificate signed by the persons aforesaid in the prescribed form.

Meetings and Proceedings

Annual general meeting.

126.—(1) Every company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:

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

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

(3) A general meeting held in pursuance of subsection (2) shall, subject to any directions of the Minister be deemed to be an annual general meeting of the company; but, where a meeting so held is not held in the year in which the default in holding the company's annual general meeting occurred, the meeting so held shall not be treated as the annual general meeting for the year in which it is held unless at that meeting the company resolves that it shall be so treated.

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

(5) If default is made in—

(a) holding a meeting of the company in accordance with subsection (1); or

(b) complying with any directions of the Minister under subsection (2);

(c) complying with subsection (4),

the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

Statutory meeting and statutory report.

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

(2) The directors shall, at least seven days before the day on which the meeting is held, forward a report (in this Act referred to as "the statutory report") to every member of the company.

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

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

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

(c) an abstract of the receipts of the company and of the payments made thereout, up to a date within seven days of

the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company;

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

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

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

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

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

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

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

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

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

Convening of extraordinary general meeting on requisition.

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

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

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

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

(6) For the purposes of this section the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice thereof as required by section 138.

Length of notice for calling meetings.

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

(a) in the case of the annual general meeting, twenty-one days' notice in writing; and

(b) in the case of a meeting other than an annual general meeting or a meeting for the passing of a special resolution, fourteen days' notice in writing in the case of a company other than an unlimited company and seven days' notice in writing in the case of an unlimited company.

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

(a) in the case of the annual general meeting by twenty-one days' notice in writing; and

(b) in the case of a meeting other than an annual general meeting or a meeting for the passing of a special resolution, by fourteen days' notice in writing in the case of a company other than an unlimited company and by seven days' notice in writing in the case of an unlimited company.

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

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

(b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority, together holding not less than ninety-five

per centum in value of the shares giving a right to attend and vote at the meeting, or, in the case of a company not having a share capital, together representing not less than ninety-five *per centum* of the total voting rights at that meeting of all the members.

General provisions as to meetings and votes.

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

(a) notice of the meeting of a company shall be served on every member of the company in the manner in which notices are required to be served by Table A and for the purpose of this paragraph the expression "Table A" means that Tables as for the time being in force;

(b) two or more members holding not less than one-tenth of the issued share capital or, if the company has not a share capital, not less than five *per centum* in number of the members of the company may call a meeting;

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

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

(e) in the case of a company originally having a share capital, every member shall have one vote in respect of each share or each thousand dollars of stock held by him, and in any other case every member shall have one vote.

(2) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in a manner prescribed in the Company's articles, the Court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting

of the company to be called, held and conducted in such manner as the Court thinks fit, and where any such order is made may give such ancillary or consequential directions as it thinks expedient, and any meeting called, held and conducted in accordance with any such order shall for all purposes be deemed to be a meeting of the company duly called, held and conducted.

(3) It is hereby declared that the directions that may be given under subsection (2) include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(4) Where by any provision contained in this Act special notice is required of a resolution, the resolution shall not be effective unless notice of the intention to move it has been given to the company not less than twenty-eight days before the meeting at which it is moved, and the company shall give its members notice of any such resolution at the same time in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice thereof, either by advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the articles, not less than twenty-one days before the meeting:

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

Proxies.

131.—(1) Any member of a company entitled to attend and vote at a meeting of the company shall be entiled to appoint another person (whether a member or not) as his proxy to attend and vote instead of him, and a proxy appointed to attend and vote instead of a member (or, where more than one proxy has been so appointed, one of their number named by the member for the purpose) shall also have the same right as the member to speak at the meeting:

Provided that, unless the articles otherwise provide—

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

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

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

(2) In every notice calling a meeting of a company having a share capital there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy to attend and vote instead of him, and that a proxy need not also be a member and if default is made in complying with this subsection as respects any meeting, every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

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

(4) Where any such instruments or documents appointing or relating to proxies as are mentioned in subsection (3) are received by or on behalf of a company, any person entitled, in his own right or as proxy for another member or members or partly in one way and partly in another to more than ten *per centum* of the total voting rights of all the members having a right to vote at the meeting or adjourned meeting affected, and also any person authorized in writing in that behalf by any person, or by any number of persons together, so entitled, shall have the right, at any time during business hours prior to the conclusion of the meeting but subject to such reasonable restrictions as the company may impose, to inspect such instruments or documents.

(5) If for the purpose of any meeting of a company invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense—

(a) to some only of the members entitled to be sent a notice of the meeting and to vote thereat by proxy; or

(b) without being accompanied by forms for the appointment of a proxy which entitle the members to direct the proxy to vote either for or against each resolution,

every officer of the company who knowingly and wilfully authorizes or permits their issue as aforesaid shall be liable to a fine not exceeding fifty thousand dollars:

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

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

Right to demand a poll.

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

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

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

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

(ii) by a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or

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

(iv) by a member holding shares in the company as a trustee of an approved employee share ownership plan as defined in section 2 of the Employees Share Ownership Plan Act, being shares conferring a right to vote at the meeting.

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

Voting on a poll.

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

Representation of companies at meetings of other companies and of creditors.

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

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

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

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

Circulation of members' resolutions.

135.—(1) A company shall at its own expense on the request in writing of any member entitled to attend and vote at an annual general meeting, include in the notice of that annual general meeting notice of any resolution consisting of not more than five hundred words which may properly be moved and is intended to be moved at that meeting:

Provided that if the proposed resolution is not passed at that meeting the same resolution or one substantially to the same effect shall not be moved at any annual general meeting within three years thereafter unless the directors shall otherwise agree or unless the request within three years is supported in writing by members of the company representing between them not less than one-twentieth of the total voting rights of all the members having at the date of the request a right to vote on the resolution to which the request relates.

(2) A company shall not be bound to give notice of any such resolution unless the written request or requests, signed by the member or members concerned, together with the resolution are deposited at the registered office of the company not less than six weeks before the meeting:

Provided that if, after any such resolution has been deposited, an annual general meeting is called for a date six weeks or less thereafter, the resolution shall be deemed to have been properly deposited.

Circulation of members' circulars.

136.—(1) A company shall, at the request in writing of any member entitled to attend and vote at an annual general meeting but (unless the company otherwise resolves or section 135 applies) at the expense of that member, circulate to members of the company a statement (whether in the form of a resolution or not) of not more than one thousand words with respect to any business to be dealt with at that meeting.

(2) Such a statement shall be circulated to members of the company in any manner permitted for service of notice of the annual general meeting, and, so far as practicable, at the same time as notice of the meeting, or, if that is impracticable, as soon as possible after the circulation of such notice.

(3) A company shall not be bound to circulate such a statement unless—

(a) the written request, signed by the member concerned, together with the statement, is deposited at the registered office of the company not less than ten days before the meeting; and

(b) there is also deposited with the request a sum reasonably sufficient to meet the company's expenses in giving effect thereto.

General provisions affecting sections 135 and 136.

137.—(1) A company shall not be bound under either section 135 or section 136 to circulate any resolution or 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 those sections 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 member making the request, notwithstanding that he is not a party to the application.

(2) In the event of any default in complying with section 135 or section 136, every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

Provisions as to extra-ordinary and special resolutions.

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

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

Provided that, if ninety-five *per centum* of the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given.

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

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

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

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

(5) When a poll is demanded in accordance with this section, in computing the majority on the poll reference shall be had to the number of votes to which each member is entitled by virtue of this Act or of 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 to be duly held when the notice is given and the meeting held in manner provided by this Act or articles.

Registration and copies of certain resolutions and agreements.

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

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

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

(4) This section shall apply to—

(a) special resolutions;

(b) extraordinary resolutions;

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

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

(e) resolutions requiring a company to be wound up voluntarily, passed under paragraph (a) of subsection (1) of section 272.

(5) If a company fails to comply with subsection (1) the company and every officer of the company who is in default shall be liable to a default fine of fifty thousand dollars.

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

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

Resolutions passed at adjourned meetings.

140. Where after the appointed day a resolution is passed at an adjourned meeting of—

(a) a company;

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

(c) the directors of a company,

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

Participation by electronic means.

141.—(1) Unless the articles of a company otherwise provides, a director may if all the directors of the company consent, participate in a meeting of directors of the company or of a committee of the directors by means of such telephone or other communicating facilities as permit all persons participating in the meeting to hear each other.

(2) A director who participates in a meeting of directors by such means as are described in subsection (1), is, for the purposes of this Act, present at the meeting, and unless the articles so provide, shall count to constitute a quorum.

(3) For the purposes of this section, the laws of Jamaica shall apply to any meeting of directors of a company incorporated in Jamaica and the meeting is deemed to take place in Jamaica.

Minutes of proceedings of meetings of company and of directors and managers.

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

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

(3) Where minutes have been made in accordance with the provisions of this section of the proceedings at any general meeting of the company or meeting of directors or managers, then, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors, managers, or liquidators, shall be deemed to be valid.

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

Inspection of minute books.

143.—(1) The books containing the minutes of proceedings of any general meeting of a company held after the appointed day shall be kept at the registered office of the company, and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours

in each day be allowed for inspection) be open to the inspection of any member without charge.

(2) Any member shall be entitled to be furnished within seven days after he has made a request in that behalf to the company with a copy of any such minutes as aforesaid at a charge not exceeding fifty dollars for every hundred words.

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

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

Accounts and Audit

Books and documents of account.

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

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

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

(c) the assets and liabilities of the company.

(2) For the purposes of subsection (1), proper books and documents of account shall not be deemed to be kept with respect to the matters aforesaid if there are not kept such books and documents as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.

(3) Subject to the provisions of subsection (4) relating to books and documents of account kept outside the Island, books and documents of account shall be kept at the registered office of the company or at such other place as the directors think fit, and shall at all times be open to inspection by the directors.

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

Provided that the Minister, if, having regard to the nature and volume of the business done in the Island by any company, he is satisfied that it is just to do so, may by order grant, subject to such conditions as may be specified in the order, exemption from any of the obligations imposed by this subsection.

(5) If any person being a director of a company fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has by his own wilful act been the cause of any default by the company thereunder, he shall, in respect of each offence, be liable on summary conviction before a Resident Magistrate to imprisonment with or without hard labour for a term not exceeding six months or to a fine not exceeding fifty thousand dollars:

Provided that—

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

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

Profit and loss account and balance sheet.

145.—(1) The directors of every company shall, at some date not later than eighteen months after the incorporation of the company and subsequently at least once in every calendar year, lay before the company in general meeting a profit and loss account or, in the case of a company not trading for profit, an income and expenditure account for the period, in the case of the first account, since the incorporation of the company, and, in any other case, since the preceding account, made up to a date not earlier than the date of the meeting by more than nine months, or, in the case of a company carrying on business or having interests abroad by more than twelve months:

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

(2) The directors shall cause to be made out in every calendar year, and to be laid before the company in general meeting, a balance sheet as at the date to which the profit and loss account, or the income and expenditure account, as the case may be, is made up and there shall be attached to every such balance sheet a report by the directors with respect to the state of the company's affairs, the amount, if any, which they recommend should be paid by way of dividend, and the amount, if any, which they propose to carry to the reserve fund, general reserve or reserve account shown specifically on the balance sheet, or to a reserve fund, general reserve or reserve account to be shown specifically on a subsequent balance sheet.

(3) If any person being a director of a company fails to take all reasonable steps to comply with the provisions of this section, he shall, in respect of each offence, be liable on summary conviction before a Resident Magistrate to imprisonment with or without hard labour for a term not exceeding six months or to a fine not exceeding fifty thousand dollars:

Provided that—

(a) in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that he had

reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the provisions of this section were complied with and was in a position to discharge that duty; and

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

General provisions as to content and form of accounts.

146.—(1) Subject to the provisions of the Seventh Schedule, the accounts of a company shall give a true and fair view of the state of affairs of the company as at the end of its financial year.

(2) The accounts of a company shall comply with the requirements of the Seventh Schedule, so far as applicable thereto.

(3) Save as expressly provided in the following provisions of this section or in the Seventh Schedule the requirements of section 145 and the Seventh Schedule shall be without prejudice either to the general requirements of subsection (1) or to any other requirements of this Act.

(4) The Minister may, on the application or with the consent of a company's directors, modify in relation to that company any of the requirements of this Act as to the matters to be stated in a company's balance sheet or profit and loss account (except the requirements of subsection (1)) for the purpose of adapting them to the circumstances of the company.

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

(a) the company has subsidiaries; and

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

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

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

(6) If any person being a director of a company fails to take all reasonable steps to secure compliance as respects any accounts laid before the company in general meeting with the provisions of this section and with the other requirements of this Act as to the matters to be stated in accounts, he shall, in respect of each offence, be liable on summary conviction before a Resident Magistrate to imprisonment with or without hard labour for a term not exceeding six months or to a fine not exceeding fifty thousand dollars:

Provided that—

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

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

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

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

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

Obligation to lay group accounts before holding company.

147.—(1) Where at the end of its financial year a company has subsidiaries, accounts or statements (in this Act referred to as "group accounts") dealing as hereinafter mentioned with the state of affairs and profit or loss of the company and the subsidiaries shall, subject to

subsection (2), be laid before the company in general meeting when the company's own balance sheet and profit and loss account are so laid.

(2) Notwithstanding anything in subsection (1)—

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

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

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

(ii) the result would be misleading, or harmful to the business of the company or any of its subsidiaries; or

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

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

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

(3) If any person being a director of a company fails to take all reasonable steps to secure compliance as respects the company with the provisions of this section, he shall, in respect of each offence, be liable on summary conviction before a Resident Magistrate to imprisonment with or without hard labour for a term not exceeding six months or to a fine not exceeding fifty thousand dollars:

Provided that—

(a) in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that he had

reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the requirements of this section were complied with and was in a position to discharge that duty; and

(b) a person shall not be sentenced to imprisonment for an offence under this section unless, in the opinion of the Court dealing with the case, the offence was committed wilfully.

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

Form of group accounts.

148.—(1) Subject to subsection (2), the group accounts laid before a holding company shall be consolidated accounts comprising—

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

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

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

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

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

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

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

Contents of group accounts.

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

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

(3) Without prejudice to subsection (1), the group accounts, if prepared as consolidated accounts, shall comply with the requirements of the Seventh Schedule so far as applicable thereto, and if not so prepared shall give the same or equivalent information:

Seventh Schedule.

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

Financial year of holding company and subsidiary.

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

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

Meaning of "holding company" and "subsidiary".

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

(a) that other either—

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

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

(b) the firstmentioned company is a subsidiary of any company which is that other's subsidiary.

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

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

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

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

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

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

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

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

(ii) by, or by a nominee for, a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity, shall be treated as held or exercisable by that other;

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

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

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

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

Requirements relating to balance sheets.

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

(2) In the case of a banking company the balance sheet shall be signed by the secretary and where there are more than three directors of the company by at least three of those directors, and where there are not more than three directors by all directors.

(3) The profit and loss account and, so far as not incorporated in the balance sheet or profit and loss account, any group accounts laid before the company in general meeting, shall be annexed to the balance sheet, and the auditors' report shall be attached thereto.

(4) Any accounts annexed pursuant to subsection (3) shall be approved by the board of directors before the balance sheet is signed on their behalf.

(5) If any copy of a balance sheet which has not been signed as required by this section is issued, circulated or published, or if any copy of a balance sheet is issued circulated or published without having annexed thereto a copy of the profit and loss account or any group accounts required by this section to be so annexed, or without having attached thereto a copy of the auditors' report, the company, and every officer of the company who is in default shall be liable to a fine not exceeding one hundred thousand dollars.

Right to receive copies of balance sheets and auditor's report.

153.—(1) In the case of every company, a copy of every balance sheet, including every document required by law to be annexed thereto which is to be laid before the company in general meeting, together with a copy of the auditors' report, shall, not less than twenty-one days before the date of the meeting, be sent to every member of the company (whether or not he is entitled to receive notice of general meetings of the company), every holder of debentures of the company (whether or not he is so entitled) and all persons other than members or holders of debentures of the company, being persons so entitled.

(2) In the case of a company not being a private company any member of the company, and any holder of debentures of the company, shall be entitled to be furnished on demand without charge with a copy of the last balance sheet of the company, including every document required by law to be annexed thereto, together with a copy of the auditors' report on the balance sheet.

(3) If default is made in complying with subsection (1), the company and every officer of the company who is in default, shall be liable to a fine not exceeding one hundred thousand dollars, and if, where any person makes a demand for a document with which he is by virtue of subsection (2) entitled to be furnished, default is made in complying with the demand within ten days after the making thereof, the company and every officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding two thousand dollars for every day during which the default continues, unless it is proved that that person has already made a demand for and been furnished with a copy of the document.

(4) In the case of a private company, any member of the company and any holder of debentures thereof shall be entitled to be furnished, within ten days after he has made a request in that behalf to the company, with a copy of the balance sheet and auditors' report at a charge not exceeding two hundred dollars or such amount as may be prescribed by regulations made by the Minister.

(5) If default is made in furnishing such a copy to any member of the company or, as the case may be, any holder of debentures thereof who demands it and tenders to the company the amount of the proper charge therefor, the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

Appointment and remuneration of auditors.

154.—(1) Every company shall at each annual general meeting appoint an auditor or auditors to hold office from the conclusion of that, until the conclusion of the next, annual general meeting.

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

(a) he is not qualified for reappointment; or

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

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

Provided that where notice is given of an intended resolution to appoint some person or persons in place of a retiring auditor, and by reason of the death, incapacity or disqualification of that person or of all those persons, as the case may be, the resolution cannot be proceeded with, the retiring auditor shall not be automatically reappointed by virtue of this subsection.

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

(4) The company shall, within seven days of the Minister's power under subsection (3) becoming exercisable, give him notice of that fact, and if a company fails to give notice as required by this subsection the company and every officer of the company who is in default shall be liable to a fine not exceeding fifty thousand dollars.

(5) Special notice shall be required for a resolution at a company's annual general meeting appointing as auditor a person other than a retiring auditor or providing expressly that a retiring auditor shall not be reappointed.

(6) On receipt of notice of such an intended resolution as aforesaid, the company shall forthwith send a copy thereof to the retiring auditor (if any).

(7) Where notice is given of such an intended resolution as aforesaid and the retiring auditor makes with respect to the intended resolution representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it do so—

(a) in any notice of the resolution given to the members of the company, state the fact of the representations having been made; and

(b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company),

and if a copy of the representations is not sent as aforesaid because received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting:

Provided that copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the Court may order the company's costs on an application under this section to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

(8) Subsection (7) shall apply to a resolution to remove the first auditors by virtue of subsection (9) as it applies in relation to a resolution that a retiring auditor shall not be reappointed.

(9) Subject as hereinafter provided, the first auditors of a company may be appointed by the directors at any time before the first annual general meeting, and the auditors so appointed shall hold office until the conclusion of that meeting:

Provided that—

(a) the company may at a general meeting of which notice has been served on the auditors in the same manner as on members of the company remove any such auditors and appoint in their place any other persons being persons who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than seven days before the date of the meeting; and

(b) if the directors fail to exercise their powers under this subsection, the company in general meeting may appoint the first auditors, and thereupon those powers of the directors shall cease.

(10) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors, if any, may act.

(11) The remuneration of the auditors of a company shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine, except that the remuneration of an auditor appointed before the first annual general meeting, or of an auditor appointed to fill a casual vacancy, may be fixed by the directors, and that the remuneration of an auditor appointed by the Minister may be fixed by the Minister.

(12) For the purposes of this subsection, any sums paid or to be paid by the company in respect of the auditors' expenses shall be deemed to be included in the expression "remuneration".

Qualification for appointment as auditor.

155. A person shall not be qualified for appointment as auditor of a company which is not a private company or of a private company which is obliged to file accounts unless he is a registered public accountant as defined in section 2 of the Public Accountancy Act.

Disqualification for appointment as auditor.

156. None of the following persons shall be qualified for appointment as auditor of a company—

(a) an officer or servant of the company;

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

(c) a body corporate.

Auditor's report and right of access to books and to attend and be heard at general meetings. Seventh and Eighth Schedules.

157.—(1) The auditors shall make a report to the members on the accounts examined by them, and on every balance sheet, every profit and loss account and all group accounts laid before the company in general meeting during their tenure of office, and the report shall contain statements as to the matters mentioned in the Seventh and Eighth Schedules.

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

(3) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and

shall be entitled to require from the officers of the company such information and explanation as he thinks necessary for the performance of the duties of the auditors.

(4) The auditors of a company shall be entitled to attend any general meeting of the company and to receive all notices of and other communications relating to any general meeting which any member of the company is entitled to receive and to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditors.

(5) If any person makes default in complying with any of the requirements of this section, he shall be liable to a fine not exceeding one hundred thousand dollars.

Dividends.

158.—(1) Subject to this section, a company may, in general meeting, declare dividends in respect of any year or other period.

(2) Where, pursuant to the articles of a company, the recommendation of the directors of a company with respect to the declaration of a dividend is rejected or varied by the company in general meeting, a statement to that effect shall be included in the relevant directors' annual report.

(3) No dividend shall be payable to the shareholders of a company except out of profits.

(4) A company shall not declare or pay a dividend if there are reasonable grounds for believing that—

(a) the company is, or would be after the payment, unable to pay its liabilities as they become due; or

(b) the realizable value of the company's assets would thereby be less than the aggregate of its liabilities and stated capital.

Exemption from the provisions of audited reports.

159.—(1) A company, which meets the criteria specified in paragraph 7 of Part II of the Seventh Schedule in a given financial year and in respect of which a resolution is passed in accordance with subsection (2) and is not—

(a) a public company;

(b) a private company whose articles provide otherwise;

(c) a company licensed under the Banking Act;

(d) an insurance company registered under the Insurance Act;

(e) a company licensed under the Securities Act;

(f) a company licensed under the Financial Institutions Act;

(g) a society registered under the Building Societies Act or the Cooperative Societies Act;

(h) a subsidiary of a company, falling within any of the categories in paragraphs (a) to (g),

shall be exempt from providing audited financial statements and an auditor's report as required under this Act with respect to that financial year.

(2) A resolution referred to in subsection (1) shall be a resolution passed unanimously at a general meeting of the company in relation to the financial year referred to in that subsection.".

Inspection

Investigation of company's affairs on application of members.

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

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

(b) in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members.

(2) The application shall be supported by such evidence as the Minister may require for the purpose of showing that the applicants have good reason for requiring the investigation, and the Minister may, before appointing an inspector, require the applicants to give security, to an amount not exceeding two hundred thousand dollars, for payment of the costs of the investigation.

Investigation of company's affairs in other cases.

161. Without prejudice to his powers under section 164 the Minister—

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

(i) the company by special resolution; or

(ii) the Court by order,

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

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

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

(ii) that persons concerned with its formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members; or

(iii) that its members have not been given all the information with respect to its affairs which they might reasonably expect.

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

162. If an inspector appointed under either section 160 or section 161 to investigate the affairs of a company thinks it necessary for the purposes of his investigation to investigate also the affairs of any other body corporate which is or has at any relevant time been the company's subsidiary or holding company or a subsidiary of its holding company or a holding company of its subsidiary, he shall have power so to do, and shall report on the affairs of the other body corporate so far as he thinks the results of his investigation thereof are relevant to the investigation of the affairs of the firstmentioned company.

Production of documents, and evidence on investigation.

163.—(1) It shall be the duty of all officers and agents of the company and of all officers and agents of any other body corporate whose affairs are investigated by virtue of section 162 to produce to the inspectors all books and documents of or relating to the company or, as the case may be, the other body corporate which are in their custody or power and otherwise to give to the inspectors all assistance in connection with the investigation which they are reasonably able to give.

(2) An inspector may examine on oath the officers and agents of the company or other body corporate in relation to its business, and may administer an oath accordingly.

(3) If any officer or agent of the company or other body corporate refuses to produce to the inspectors any book or document which it is his duty under this section so to produce, or refuses to answer any question which is put to him by the inspectors with respect to the affairs of the company or other body corporate, as the case may be, the inspectors may certify the refusal under their hand to the Court, and the Court may thereupon inquire into the case, and after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, punish the offender in like manner as if he had been guilty of contempt of the Court.

(4) If an inspector thinks it necessary for the purpose of his investigation that a person whom he has no power to examine on oath should be so examined, he may apply to the Court and the Court may if it sees fit order that person to attend and be examined on oath before it on any matter relevant to the investigation, and on any such examination—

(a) the inspector may take part therein either personally or by an attorney-at-law;

(b) the Court may put such questions to the person examined as the Court thinks fit;

(c) the person examined shall answer all such questions as the Court may put or allow to be put to him, but may at his own cost employ an attorney-at-law who shall be at liberty to put

to him such questions as the attorney-at-law may deem just for the purpose of enabling him to explain or qualify any answers given by him,

and notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him:

Provided that, notwithstanding anything in paragraph (c) of this subsection, the Court may allow the person examined such costs as in its discretion it may think fit, and any costs so allowed shall be paid as part of the expenses of the investigation.

(5) In this section, any reference to officers or to agents shall include past, as well as present, officers or agents, as the case may be, and for the purposes of this section the expression "agents", in relation to a company or other body corporate shall include the bankers and attorneys of the company or other body corporate and any persons employed by the company or other body corporate as auditors, whether or not those persons are officers of the company or other body corporate.

Inspectors' report.

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

(2) Any such report shall be written or printed, as the Minister may direct.

(3) The Minister shall—

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

(b) if the Minister thinks fit, furnish a copy thereof on request and on payment of the prescribed fee to any other person who is a member of the company or of any other body corporate dealt with in the report by virtue of section 162 or whose interests as a creditor of the company or of any such other body corporate as aforesaid appear to the Minister to be affected;

(c) where the inspectors are appointed under section 160, furnish, at the request of the applicants for the investigation, a copy to them; and

(d) where the inspectors are appointed under section 161 in pursuance of an order of the Court, furnish a copy to the Court,

and may also cause the report to be printed and published.

Proceedings on inspector's report.

165.—(1) If from any report made under section 164 it appears to the Minister that any person has, in relation to the company or to any other body corporate whose affairs have been investigated by virtue of section 162 been guilty of any offence for which he is criminally liable, the Minister shall, if it appears to him that the case is one in which the prosecution ought to be undertaken by the Director of Public Prosecutions refer the matter to him.

(2) If, where any matter is referred to the Director of Public Prosecutions under this section, he considers that the case is one in which a prosecution ought to be instituted, he shall institute proceedings accordingly, and it shall be the duty of all officers and agents of the company or other body corporate as aforesaid, as the case may be (other than the defendant in the proceedings), to give him all assistance in connection with the prosecution which they are reasonably able to give.

(3) Subsection (5) of section 163 shall apply for the purposes of this subsection as it applies for the purposes of that section.

(4) If, in the case of any body corporate liable to be wound up under this Act, it appears to the Minister from any such report as aforesaid that it is expedient so to do by reason of any such circumstances as are referred to in sub-paragraph (i) or (ii) of paragraph (b) of section 161, the Minister may, unless the body corporate is already being wound up by the Court, present a petition for it to be so wound up if the Court thinks it just and equitable that it should be wound up or a petition for an order under section 213 or both.

(5) If from any such report as aforesaid it appears to the Minister that proceedings ought in the public interest to be brought by any body

corporate dealt with by the report for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation of that body corporate or the management of its affairs, or for the recovery of any property of the body corporate which has been misapplied or wrongfully retained, the Minister may himself bring proceedings for that purpose in the name of the body corporate.

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

Expenses of investigation of company's affairs.

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

(a) any person who is convicted on a prosecution instituted as a result of the investigation by the Director of Public Prosecutions, or who is ordered to pay damages or restore any property in proceedings brought by virtue of subsection (5) of section 165, may in the same proceedings be ordered to pay the expenses to such extent as may be specified in the order;

(b) any body corporate in whose name proceedings are brought as aforesaid shall be liable to the amount or value of any sums or property recovered by it as a result of those proceedings; and

(c) unless as a result of the investigation a prosecution is instituted by the Director of Public Prosecutions—

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

(ii) the applicants for the investigation, where the inspector was appointed under section 162, shall

be liable to such extent (if any) as the Minister may direct, and any amount for which a body corporate is liable by virtue of paragraph (b) of this subsection shall be a first charge on the sums or property mentioned in that paragraph.

(2) The report of an inspector appointed otherwise than of the Minister's own motion may, if the inspector thinks fit, and shall, if the Minister so directs, include a recommendation as to the directions (if any) which the inspector thinks appropriate, in the light of his investigation, to be given under paragraph (c) of subsection (1).

(3) For the purposes of this section, any costs or expenses incurred by the Minister in or in connection with proceedings brought by virtue of subsection (5) of section 165 (including expenses incurred by virtue of subsection (6) thereof) shall be treated as expenses of the investigation giving rise to the proceedings.

(4) Any liability to repay the Minister imposed by paragraphs (a) and (b) of subsection (1) shall, subject to satisfaction of the Minister's right to repayment, be a liability also to indemnify all persons against liability under paragraph (c) thereof, and any such liability imposed by paragraph (a) shall, subject as aforesaid, be a liability also to indemnify all persons against liability under paragraph (b); and any person liable under paragraph (a) or (b) or either sub-paragraph of paragraph (c) shall be entitled to contribution from any other person liable under the same paragraph or subparagraph, as the case may be, according to the amount of their respective liabilities thereunder.

(5) The expenses incurred by the Minister under this section shall, so far as not recovered thereunder, be paid out of moneys provided by Parliament.

Inspectors' report to be evidence.

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

Appointment and powers of inspectors to investigate ownership of company.

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

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

(3) Where an application for an investigation under this section with respect to particular shares or debentures of a company is made to the Minister by members of the company, and the number of applicants or the amount of the shares held by them is not less than that required for an application for the appointment of an inspector under section 160, the Minister shall appoint an inspector to conduct the investigation unless he is satisfied that the application is vexatious, and the inspector's appoinment 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, sections 162 to 164 shall apply with the necessary modifications of references to the affairs of the company or to those of any other body corporate, so, however, that—

(a) those sections shall apply in relation to all persons who are or have been, or whom the inspector has reasonable cause

to believe to be or have been, financially interested in the success or failure or the apparent success or failure of the company or any other body corporate whose membership is investigated with that of the company, or able to control or materially to influence the policy thereof, including persons concerned only on behalf of others, as they apply in relation to officers and agents of the company or of the other body corporate, as the case may be; and

(b) the Minister shall not be bound to furnish the company or any other person with a copy of any report by an inspector appointed under this section or with a complete copy thereof if 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 any such report or, as the case may be, the parts of any such report, as respects which he is not of that opinion.

(6) The expenses of any investigation under this section shall be paid out of moneys provided by Parliament.

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

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

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

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

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

(2) For the purposes of this section, a person shall be deemed to have an interest in a share or debenture if he has any right to acquire

or dispose of the share or debenture or any interest therein or to vote in respect thereof, or if his consent is necessary for the exercise of any of the rights of other persons interested therein, or if other persons interested therein can be required or are accustomed to exercise their rights in accordance with his instructions.

(3) Any person who fails to give any information required of him under this section, or who in giving any such information makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, shall be liable on summary conviction before a Resident Magistrate to imprisonment with or without hard labour for a term not exceeding six months or to a fine not exceeding fifty thousand dollars or to both such imprisonment and fine.

Power to impose restrictions on shares or debentures.

170.—(1) Where in connection with an investigation under either section 168 or 169 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 direct that the shares shall until further order be subject to the restrictions imposed by this section.

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

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

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

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

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

(3) Where the Minister makes an order directing that shares shall be subject to the said restrictions, or refuses to make an order directing that shares shall cease to be subject thereto, any person aggrieved thereby may apply to the Court, and the Court may, if it sees fit, direct that the shares shall cease to be subject to those restrictions.

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

(5) Any person who—

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

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

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

shall be liable on summary conviction before a Resident Magistrate to imprisonment with or without hard labour for a term not exceeding six months or to a fine not exceeding fifty thousand dollars or to both such imprisonment and fine.

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

(7) A prosecution shall not be instituted under this section by any person other than the Director of Public Prosecutions except by or with the consent of the Minister.

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

Saving for attorneys and bankers.

171. Nothing in the foregoing provisions of this Part shall require disclosure to the Minister or to any inspector appointed by him—

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

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

Directors and other Officers

Number of directors and secretary.

172.—(1) A private company shall have at least one director, but a public company shall have at least three directors, at least two of whom are not employees of the company or any of its affiliates.

(2) Every company shall have a secretary.

(3) A sole director of a company shall not also be secretary thereof and no company shall—

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

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

(4) It is the duty of the directors of a public company to take all reasonable steps to ensure that the secretary or each joint secretary of the company is a person who appears to them to have the requisite knowledge and experience to discharge the functions of secretary of the company.

(5) Anything required or authorized to be done by or to the secretary of a company may, if the office is vacant or there is for any other reason no secretary capable of acting, be done by or to any assistant or deputy secretary, or, if there is no assistant or deputy secretary capable of acting, by or to any officer of the company authorized generally or specially in that behalf by the directors.

(6) Notice of the appointment of a secretary to a company shall be given to the Registrar in the prescribed form within fifteen days after the date of that appointment.

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

173. A provision requiring or authorizing a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the secretary.

Duty of care.

174.—(1) Every director and officer of a company in exercising his powers and discharging his duties shall—

(a) act honestly and in good faith with a view to the best interest of the company; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances, including, but not limited to the general knowledge, skill and experience of the director or officer.

(2) A director or officer of a company shall not be in breach of his duty under this section if the director or officer exercised due care, diligence and skill in the performance of that duty or believed in the existence of facts that, if true, would render the director's or officer's conduct reasonably prudent.

(3) For the purposes of this section, a director or officer shall be deemed to have acted with due care, diligence and skill where, in the absence of fraud or bad faith, the director or officer reasonably relied in good faith on documents relating to the company's affairs, including financial statements, reports of experts or on information presented by other directors or, where appropriate, other officers and professionals.

(4) In determining what are the best interests of the company, a director or officer may have regard to the interests of the company's shareholders and employees and the community in which the company operates.

(5) The duties imposed by subsection (1) on the directors or officers of a company is owed to the company alone.

(6) Where pursuant to a contract of service with a company, a director or officer is required to perform management functions, the terms of that contract may require the director or officer in the exercise of those functions, to observe a higher standard than that specified in subsection (1).

Restrictions on appointment or advertisement of director.

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

(a) signed and delivered to the Registrar for registration a consent in writing to act as such director; and

(b) either—

(i) signed the articles for a number of shares not less than his qualification, if any; or

(ii) taken from the company and paid or agreed to pay for his qualification shares, if any; or

(iii) signed and delivered to the Registrar for registration an undertaking in writing to take from the company and pay for his qualification shares, if any; or

(iv) made and delivered to the Registrar for registration a statutory declaration to the effect that a number of shares, not less than his qualification, if any, are registered in his name.

(2) Where a person has signed and delivered as aforesaid an undertaking to take and pay for his qualification shares, he shall, as regards those shares, be in the same position as if he had signed the articles for that number of shares.

(3) On the application for registration of the articles of a company the applicant shall deliver to the Registrar a list of the persons who have consented to be directors of the company, and if this list contains the name of any person who has not so consented, the applicant shall be liable to a fine not exceeding one hundred thousand dollars.

(4) This section shall not apply to—

(a) a company not having a share capital; or

(b) a private company; or

(c) a company which was a private company before becoming a public company; or

(d) a prospectus issued by or on behalf of a company after the expiration of one year from the date on which the company was entitled to commence business.

Validity of acts of directors.

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

Share qualifications of directors.

177.—(1) Without prejudice to the restrictions imposed by section 175, it shall be the duty of every director who is by the articles of the company required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the articles.

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

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

(4) A person vacating office under this section shall be incapable of being reappointed director of the company until he has obtained his qualification.

(5) If after the expiration of the period or shorter time any unqualified person acts as a director of the company, he shall be liable to a fine not exceeding two thousand dollars for every day between the expiration of the period or shorter time or the day on which he ceased to be qualified, as the case may be, and the last day on which it is proved that he acted as a director.

Appointment of directors to be voted on individually.

178.—(1) At a general meeting of a company other than a private company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be made, unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.

(2) A resolution moved in contravention of this section shall be void, whether or not its being so moved was objected to at the time:

Provided that—

(a) this subsection shall not be taken as excluding the operation of section 176; and

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

(3) For the purposes of this section, a motion for approving a person's appointment or for nominating a person for appointment shall be treated as a motion for his appointment.

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

Removal of directors.

179.—(1) A company may by ordinary resolution remove a director before the expiration of his period of office notwithstanding anything in its articles or in any agreement between it and him:

Provided that this subsection shall not, in the case of a private company, authorize the removal of a director holding office for life on the 5th of February, 1963, whether or not subject to retirement under an age limit by virtue of the articles or otherwise.

(2) Special notice shall be required of any resolution to remove a director under this section or to appoint somebody instead of a director so removed at the meeting at which he is removed, and on receipt of notice of an intended resolution to remove a director under this section the company shall forthwith send a copy thereof to the director concerned, and the director (whether or not he is a member of the company) shall be entitled to be heard on the resolution at the meeting.

(3) Where notice is given of an intended resolution to remove a director under this section and the director concerned makes with respect thereto representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so—

(a) in any notice of the resolution given to members of the company state the fact of the representations having been made; and

(b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company),

and if a copy of the representations is not sent as aforesaid because received too late or because of the company's default, the director may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting:

Provided that copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the Court may order the company's costs on an application under this section to be paid in whole or in part by the director, notwithstanding that he is not a party to the application.

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

(5) A person appointed director in place of a person removed under this section shall be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become director on the day on which the person in whose place he is appointed was last appointed a director.

(6) Nothing in this section shall be taken as depriving a person removed thereunder of compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director or as derogating from any power to remove a director which may exist apart from this section.

Court disqualified directors.

180.—(1) Where, pursuant to subsection (2), a complaint is made to the Registrar by—

(a) shareholders of a company;

(b) members of the board of directors of a company or creditors of a company, as the case may be; or

(c) the liquidator of the company, or the Trustee,

that person is unfit to be concerned in the management of a company, the Registrar shall act in accordance with subsection (3).

(2) A complaint referred to in subsection (1) shall be in writing and shall state the grounds on which it is made.

(3) Upon receipt of such a complaint the Registrar shall—

(a) investigate the matter and afford to the complainants an opportunity to be heard; and

(b) if satisfied that there are sufficient grounds for a hearing of the matter by the Court, issue a certificate to that effect to the shareholders, liquidator, Trustee, members or creditors, as the case may be, who shall, subject to subsection (7), have the right to make an application to the Court on the matter.

(4) Any shareholder, member or creditor, as the case may be, who is aggrieved by a refusal of the Registrar to issue a certificate referred to in subsection (3) (b), may appeal against that decision to the Master in Chambers.

(5) Where the Registrar is satisfied that a person is unfit to be concerned in the management of a company, the Registrar may make an application to the Court on the matter.

(6) Where, on an application made pursuant to subsection (3) (b) or (5), it is made to appear to the Court that a person is unfit to be concerned in the management of a company, the Court may order that, without the prior leave of the Court, that person may not be a director of the company, or in any way, directly or indirectly, be concerned with the management of the company for such period as may be specified in the order—

(a) beginning with the date of the order or, if the person is serving, or is to serve, a term of imprisonment and the Court so directs, beginning with the date on which he completes that term of imprisonment or is otherwise released from prison; and

(b) not exceeding five years.

(7) In determining whether or not to make an order under subsection (6) the Court shall have regard to the following—

(a) any misfeasance or breach of any fiduciary or other duty by the director in relation to the company;

(b) any misapplications or retention by the director of, or any conduct by the director giving rise to an obligation to account for, any money or other property of the company;

(c) the extent of the director's responsibility for any failure by the company to comply with the provisions of this Act in relation to the keeping and maintenance of accounting records;

(d) whether the director has knowingly been party to carrying on the business of the company in a manner for which he may be liable (whether he has been convicted or not) under section 322;

(e) such other circumstances as may be prescribed.

(8) Before making an application under this section in relation to any person, the Registrar or any other person intending to apply shall give to the person concerned not less than ten days' notice of the intention to make the application.

(9) On the hearing of an application made under this section or, as the case may be, an application for leave as mentioned in subsection (6), any person concerned with the application may appear and call attention to any matters that are relevant, and may give evidence, call witnesses and be represented by an attorney-at-law.

Provisions as to undischarged bankrupts acting as directors.

181.—(1) If any person being an undischarged bankrupt acts as director of, or directly or indirectly takes part in, or is concerned in the management of, any company except with the leave of the Court, he shall be liable on conviction on indictment to imprisonment with or without hard labour for a term not exceeding two years, or on summary conviction before a Resident Magistrate to imprisonment with or without hard labour for a term not exceeding two years or to a fine not exceeding two hundred thousand dollars, or to both such imprisonment and fine:

Provided that a person shall not be guilty of an offence under this section by reason that he, being an undischarged bankrupt, has acted as director of, or taken part or been concerned in the management of a company, if he was on the appointed day acting as director of, or taking part or being concerned in the management of, that company and has continuously so acted, taken part, or been concerned since that date and the bankruptcy was prior to that date.

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

(3) In this section the expression "company" includes an unregistered company and a company incorporated outside the Island which has an established place of business within the Island.