

COMPANIES ACT.

Act No. 33, 1936.

Edward VIII. An Act to amend and consolidate the law relating to companies; and for purposes connected therewith. [Assented to, 22nd July, 1936.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

Short title
and com-
mencement.

1. (1) This Act may be cited as the "Companies Act, 1936."

(2) This Act save as in this section mentioned shall commence on the first day of January, one thousand nine hundred and thirty-seven, but the Governor may by proclamation published in the Gazette from time to time appoint earlier days on which all or any of the provisions of Part II, Part VIII, Part X, Part XI, Part XIII, or Part XIV of this Act or the relative Schedules shall commence and the provisions specified in any such proclamation shall commence accordingly.

(3) This section shall commence on the date on which the Royal Assent to this Act is given by the Governor on behalf of His Majesty.

Division
into Parts.

2. This Act is divided in Parts, as follows:—

PART I.—PRELIMINARY—ss. 1-6.

PART II.—ADMINISTRATION OF ACT—s. 7.

PART

PART III.—INCORPORATION OF COMPANIES AND MATTERS INCIDENTAL THERETO—ss. 8-40.

DIVISION 1.—*Prohibition of large partnerships—s. 8.*

DIVISION 2.—*Memorandum and articles of association—ss. 9-26.*

DIVISION 3.—*Registration—ss. 27-36.*

DIVISION 4.—*Proprietary companies—ss. 37-40.*

PART IV.—NO-LIABILITY COMPANIES—ss. 41-44.

PART V.—REGISTRATION OF COMPANIES NOT FORMED UNDER THIS ACT—ss. 45-60.

PART VI.—FOREIGN COMPANIES—ss. 61-74.

PART VII.—MANAGEMENT AND ADMINISTRATION OF COMPANIES—ss. 75-135.

DIVISION 1.—*Registered office and name—ss. 75-77.*

DIVISION 2.—*Register of members—ss. 78-85.*

DIVISION 3.—*Branch register—ss. 86, 87.*

DIVISION 4.—*Annual return—ss. 88-91.*

DIVISION 5.—*Meetings and proceedings—ss. 92-101.*

DIVISION 6.—*Accounts and audit—ss. 102-115.*

DIVISION 7.—*Inspection—ss. 116-119.*

DIVISION 8.—*Directors—ss. 120-132.*

DIVISION 9.—*Arrangements and reconstructions—ss. 133-135.*

PART VIII.—SHARE CAPITAL AND DEBENTURES—ss. 136-183.

DIVISION 1.—*Prospectus—ss. 136-141.*

DIVISION 2.—*Allotment—ss. 142-145.*

DIVISION 3.—*Commissions and discounts—ss. 146-150.*

DIVISION 4.—*Share capital—ss. 151-164.*

DIVISION 5.—*Workers' shares—ss. 165-168.*

DIVISION 6.—*Debentures—ss. 169-173.*

DIVISION 7.—*Dealings in shares and debentures—ss. 174-183.*

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PART IX.—REGISTRATION OF CHARGES—ss. 184-198.

PART X.—WINDING UP—ss. 199-328.

DIVISION 1.—*Preliminary*—ss. 199-205.DIVISION 2.—*Winding up by court*—ss. 206-259.DIVISION 3.—*Voluntary winding up*—ss. 260-288.DIVISION 4.—*Winding up subject to supervision of court*—ss. 289-293.DIVISION 5.—*Provisions applicable to every mode of winding up*—ss. 294-321.DIVISION 6.—*Provisions as to dissolution*—ss. 322-328.

PART XI.—WINDING UP OF UNREGISTERED COMPANIES—ss. 329-334.

PART XII.—RECEIVERS AND MANAGERS—ss. 335-340.

PART XIII.—RESTRICTIONS ON SALE OF SHARES—ss. 341-344.

PART XIV.—MISCELLANEOUS—ss. 345-380.

SCHEDULES 1-13.

Repeal.
Schedule
One.
1899, No.
40, s. 3.

3. (1) The Acts mentioned in Schedule One to this Act are to the extent therein expressed hereby repealed.

(2) All persons appointed under or by virtue of the provisions of any enactment hereby repealed and holding office at the commencement of this Act shall remain in office as if this Act had been in force at the time when they were appointed and they had been appointed hereunder, and this Act shall apply to them accordingly.

(3) All rules of court made under the authority of any enactment hereby repealed and being in force at the commencement of this Act shall be deemed to have been made under the authority of this Act, and references in any such rules to the provisions of any enactment hereby repealed shall be construed as references to the corresponding provisions of this Act.

(4) All rules, regulations, and articles of association, and every memorandum for registration, and every memorandum of association duly made or deemed to have

have been duly made, and all registrations duly effected or deemed to have been duly effected, and any other matter or thing duly done under or in accordance with any of the provisions of any enactment hereby repealed and in force and operative at the commencement of this Act, shall be deemed to be and to have been duly made, effected or done under the corresponding provisions of this Act, and as if this Act had been in force when the same were made, effected or done respectively.

4. (1) The repeal by this Act of any enactment Savings.
shall not affect—

19 and 20,
Geo. V, c. 28,
s. 382.

- (a) the incorporation of any company registered under any enactment so repealed;
- (b) Table A in the Second Schedule to the Companies Act, 1899, or any part thereof (either as originally contained in that Schedule or as altered in pursuance of section seventy-two of that Act), so far as the same applies to any company existing at the commencement of this Act;
- (c) the Seventh Schedule to the Companies Act, 1899, or any part thereof (either as originally framed or as altered in pursuance of section two hundred and seven of that Act), so far as the same applies to any company existing at the commencement of this Act.

(2) The provisions of this Act with respect to *Ibid. s. 383.* winding up shall not apply to any company of which the winding up has commenced before the commencement of this Act, but every such company shall be wound up in the same manner and with the same incidents as if this Act had not been passed, and, for the purposes of the winding up, the Act or Acts under which the winding up commenced and any rules of court made thereunder shall be deemed to remain in full force.

(3) The mention of particular matters in this *Ibid. s. 381* section or in any other section of this Act shall not ^{(2).} prejudice the general application of sections six and eight of the Interpretation Act of 1897, with regard to the effect of repeals.

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19 and 20
Geo. V, c.
23, s. 381
(2).Provisions
of repealed
Acts.
Ibid. s. 381
(2).Saving
of certain
enactments.
cf. *Ibid.*
s. 382.Interpreta-
tion.
Ibid. s. 380.1899, No.
40, s. 2.

5. (1) Every conveyance, mortgage, deed or agreement made, resolution passed, direction given, proceeding taken, instrument issued, or thing done before the commencement of this Act in pursuance of any enactment hereby repealed shall be of the same force as if this Act had not been passed, and to the extent necessary to give the foregoing provisions full effect the repealed enactment shall be deemed to remain in full force.

(2) Where any enactment repealed by this Act is mentioned or referred to in any Act or document, that Act or document shall be read as if the corresponding provision, if any, of this Act were therein mentioned or referred to and substituted for the repealed enactment.

(3) Nothing in this Act shall affect the provisions of section five of the Trade Union Act, 1881, or of the Mining Partnerships Act, 1900, or of section forty-three of the Public Trustee Act, 1913. A reference in any such Act to the Companies Act, 1899, or any Act repealed by that Act shall be read as a reference to this Act.

(4) The Governor may by proclamation published in the Gazette apply and extend all or any of the provisions of this Act in relation to the prospectus of a company, with or without any modifications, to and in respect of a mining company formed and registered under the Mining Partnerships Act, 1900, or proposed to be so formed and registered.

Any such proclamation may be from time to time varied or revoked by a like proclamation.

6. (1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them, that is to say:—

“Administrator” means administrator within the meaning of the Wills, Probate and Administration Act, 1898-1932, and includes the public trustee acting as collector of an estate under an order to collect.

“Annual return” means the return required to be made, in the case of a company having a share capital, under section eighty-eight, and, in the case of a company not having a share capital, under section eighty-nine, of this Act.

“Articles”

“ Articles ” means the articles of association of a company, as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained, as the case may be, in Table A in the Second Schedule to the Companies Act, 1899, or in that Table as altered in pursuance of section seventy-two of that Act or in the Seventh Schedule to the Companies Act, 1899, or in that Schedule as altered in pursuance of section two hundred and seven of that Act, or in Table A in Schedule Two to this Act; and in relation to a no-liability company means the rules of the company.

“ Bankruptcy ” includes any act or proceeding in law having under any enactment heretofore or for the time being in force effects or results similar to those of bankruptcy, and “ bankrupt ” has a meaning corresponding with that of “ bankruptcy.”

“ Book and paper ” and “ book or paper ” include accounts, deeds, writings, and documents.

“ Capital shares ” means shares other than workers’ shares.

“ Company ” means a company formed and registered under this Act or an existing company.

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

“ Company limited by shares ” means a company formed on the principle of having the liability of its members limited by the memorandum to the amount unpaid on their shares.

“ Court ” means the Supreme Court in its equitable jurisdiction.

“ 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 ”

No. 38, 1906.

- “ Director ” includes any person occupying the position of director by whatever name called.
- “ Document ” includes summons, notice, order, and other legal process, and registers.
- “ Executor ” means the executor to whom probate has been granted and includes an executor by right of representation.
- “ Existing company ” means a company formed and registered under or subject to the Companies Act, 1899, or a company deemed to be registered under that Act.
- “ Foreign company ” means a company incorporated outside the State, which establishes a place of business or carries on business within the State, and includes a company incorporated under the law for the time being in force in the Territory for the Seat of Government of the Commonwealth of Australia.
- “ General rules ” means general rules made under this Act, and includes forms.
- “ Judge ” means a judge of the Supreme Court.
- “ Limited company ” means a company limited by shares or a company limited by guarantee, but does not include a no-liability company.
- “ Manager ” includes acting manager, managing director, secretary, or principal executive officer by whatever designation he is styled.
- “ Memorandum ” means the memorandum of association of a company as originally framed or as altered in pursuance of any enactment.
- “ Mortgage ” includes agreement to give a mortgage.
- “ No-liability company ” means a company incorporated on the no-liability system in accordance with the provisions of Part IV of this Act, or an existing company being a no-liability mining company.
- “ Prescribed ” means prescribed by this Act or by regulation or general rules or rules and orders made pursuant to this Act and in accordance with and subject to the provisions of this Act and the directions contained in Schedule Thirteen to this Act.

“ Proprietary ”

- “ Proprietary company ” means a company whose memorandum or articles contain the restrictions and prohibitions referred to in section thirty-seven of this Act, and otherwise conforms to the terms of that section.
- “ 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.
- “ Public company ” means a limited company other than a proprietary company.
- “ Rules ” in relation to a no-liability company means the rules of the company as originally framed or as altered by special resolution, including so far as they apply to the company the rules contained, as the case may be, in the Seventh Schedule to the Companies Act, 1899, or in that Schedule as altered in pursuance of section two hundred and seven of that Act or in Table F of Schedule Two to this Act. Schedule Two.
- “ Secretary ” includes acting secretary.
- “ Share ” means share in the share capital of the company, and includes stock except where a distinction between stock and shares is expressed or implied.
- “ State ” means the State of New South Wales.
- “ Subsidiary company ” means a subsidiary company as defined in section one hundred and seven of this Act.
- “ Table A ” means Table A in Schedule Two to this Act. Schedule Two.
- “ The Companies Acts ” means the Companies Act, 1899, and any Act amending that Act.
- “ The Registrar-General ” includes a Deputy Registrar-General and any person appointed to exercise the powers of the Registrar-General.
- “ Unlimited company ” means a company formed on the principle of having no limit placed on the liability of its members.
- “ Workers’ shares ” means shares issued as workers’ shares in accordance with the provisions of section one hundred and sixty-five of this Act.

(2)

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Penalties
at foot of
sections or
subsections.
cf. Acts
Interpretation
Act (Com-
monwealth),
1904-1932,
s. 3.

(2) A person shall not be deemed within the meaning of any provision of 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) The penalty, pecuniary or other, set out—

- (a) at the foot of any section of this Act; or
- (b) at the foot of any subsection of any section of this Act, but not at the foot of the section,

shall indicate that any contravention of the section or of the subsection respectively, whether by act or omission, shall be an offence against the Act, punishable upon conviction by a penalty not exceeding the penalty mentioned:

Provided that where the penalty is expressed to apply to a part only of the section or subsection, it shall apply to that part only.

(4) In the application of this Act to existing companies (as defined in subsection one of this section) it shall apply in the same manner—

- (a) in the case of a limited company other than a company limited by guarantee as if the company had been formed and registered under this Act as a company limited by shares;
- (b) in the case of a company limited by guarantee as if the company had been formed and registered under this Act as a company limited by guarantee;
- (c) in the case of a company other than a limited company and not being a no-liability company as if the company had been formed and registered under this Act as an unlimited company;
- (d) in the case of a no-liability company as if the company had been formed and registered under this Act as a no-liability company.

(5) This Act shall apply to every company registered but not formed under the Acts repealed by this Act in the same manner as in this Act it is declared to apply to companies registered but not formed under this Act.

(6)

(6) In every case of a company referred to in subsection four or subsection five of this section reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company concerned was registered under the Acts repealed by this Act or any Act which was repealed or replaced by any such Act.

(7) Any register kept under any Act repealed by ^{cf. 19 & 20} this Act shall be deemed part of the register to be kept <sup>Geo. V,
c. 23, s. 381</sup> under the corresponding provisions of this Act. ^{(2) (d) (3).}

PART II.

ADMINISTRATION OF ACT.

7. (1) For the purposes of this Act the registration of companies shall be conducted and executed by the Registrar-General, who shall also carry out and perform such duties, powers, and functions as are committed to him by this Act. <sup>Administration of
Act by
Registrar-
General.</sup>

(2) Subject to the provisions of the Public Service Act, 1902, as amended by subsequent Acts, the Governor may from time to time appoint such Deputy Registrars-General, clerks and servants as he may think necessary to assist in the conduct and execution of the registration of companies and the carrying out and performance of the duties, powers, and functions committed to the Registrar-General by this Act.

(3) Regulations may be made under the provisions of this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed, to carry any provision of this Act which relates to the registration of companies or which commits the Registrar-General any duty, power or function into effect.

(4) Whenever anything is by any law appointed to be done by the Registrar-General it may be done by any Deputy Registrar-General.

(5) The Governor may arrange with the Governor-General of the Commonwealth for the handing over to the Attorney-General of the Commonwealth of all instruments and documents required by any Act repealed by this

No. 88, 1936.

this Act in its application to the Territory for the Seat of Government, to be registered, enrolled, recorded, filed, or deposited by or with the Registrar-General in respect of companies the registered offices of which are situate in the said Territory, or for the delivery to such Attorney-General of copies thereof duly certified by the Registrar-General as correct copies.

(6) The Registrar-General, officers of the court acting in the winding up of companies and other prescribed officers shall make prescribed returns of the business of their respective courts and offices at the times and in the manner prescribed to the Minister.

(7) The Minister shall cause a general annual report of matters within this Act to be prepared and laid before both Houses of Parliament.

PART III.

INCORPORATION OF COMPANIES AND MATTERS INCIDENTAL THERETO.

DIVISION 1.—*Prohibition of large partnerships.*

Number of
partners.
19 and 20
Geo. V,
c. 23, s. 357.
1899, No.
40, s. 4.

8. (1) No company association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Act or Imperial Act or of a royal charter or of letters patent or is a company formed for mining purposes under or in pursuance of the Mining Partnerships Act, 1900, or some Act repealed by that Act.

19 and 20
Geo. V,
c. 23, s. 358.
1899, No.
40, s. 4.

(2) No company association or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking unless it is registered as a company under this Act, or is formed in pursuance of some other Act or Imperial Act, or of a royal charter or letters patent.

DIVISION

DIVISION 2.—*Memorandum and articles of association.*

9. (1) Any seven or more persons, or, where the company to be formed will be a proprietary company, any two or more persons, associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability.

Incorporated company.
19 and 20 Geo. V, c. 28, s. 1.
1899, No. 40, ss. 5, 6.

(2) Such a company may be either—

- (a) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them; or
- (b) a company having the liability of its members limited by the memorandum 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; or
- (c) a company not having any limit on the liability of its members.

10. (1) In the case of a company limited by shares the memorandum must state—

Company limited by shares.
19 and 20 Geo. V, c. 28, s. 2.
1899, No. 40, s. 7.

- (a) the name of the company, with "Limited" as the last word in its name;
- (b) the objects of the company;
- (c) that the liability of the members is limited;
- (d) the amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount;
- (e) the place in New South Wales in which the registered office of the company is proposed to be situate.

(2) No subscriber of the memorandum may take less than one share, and each subscriber must write in words opposite to his full name the number of shares that he takes.

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Company
limited by
guarantee
19 and 20
Geo. V,
c. 23, s. 2.
1899, No.
40, s. 8.

11. (1) In the case of a company limited by guarantee the memorandum must state—

- (a) the name of the company, with " Limited " as the last word in its name;
- (b) the objects of the company;
- (c) that the liability of the members is limited;
- (d) that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount;
- (e) the place in New South Wales in which the registered office of the company is proposed to be situate.

(2) If the company has a share capital, the memorandum must also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount, and no subscriber of the memorandum may take less than one share, and each subscriber must write in words opposite to his full name the number of shares that he takes.

Unlimited
company.
19 and 20
Geo. V, c.
23, s. 2 (1)
1899, No.
40, s. 9.

12. (1) In the case of an unlimited company the memorandum must state the name of the company, and the objects of the company, that the liability of the members is unlimited, and the place in New South Wales in which the registered office of the company is proposed to be situate.

(2) If the company has a share capital, no subscriber of the memorandum may take less than one share, and each subscriber must write in words opposite to his full name the number of shares that he takes.

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13. The memorandum of a company must be printed, and must be signed by each subscriber in the presence of at least one witness, not being a subscriber, who must attest the signature.

Form and
signature of
memorandum.
19 and 20
Geo. V,
c. 23, s. 3.

cf. 1899,
No. 40, s. 10.

Alteration of
memorandum.
19 and 20
Geo. V,
c. 23, s. 4.

cf. 1899,
No. 40, s. 11.

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

Alteration
of objects.
19 and 20
Geo. V,
c. 23, s. 5.

15. (1) Subject to the provisions of this section a company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company so far as may be required to enable it to do any one or more of the following, that is to say—

- (a) to carry on its business more economically or more efficiently;
- (b) to attain its main purpose by new or improved means;
- (c) to enlarge or change the local area of its operations;
- (d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company;
- (e) to restrict or abandon any of the objects specified in the memorandum;
- (f) to sell or dispose of the whole or any part of the undertaking of the company;
- (g) to amalgamate with any other company or body of persons;
- (h) to subscribe to funds for charitable, philanthropic or patriotic purposes.

(2) The alteration shall not take effect until and except in so far as it is confirmed by the court.

(3) Before confirming the alteration the court must be satisfied—

- (a) that sufficient notice has been given to every holder of debentures of the company, and to any persons or class of persons whose interests will, in the opinion of the court, be affected by the alteration; and

(b).

(b) that with respect to every creditor who in the opinion of the court is entitled to object, and who signifies his objection in manner directed by the court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the court:

Provided that the court may in the case of any person or class, for special reasons, dispense with the notice required by this section.

(4) The court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit, and may make such order as to costs as it thinks proper.

(5) The court shall, in exercising its discretion under this section, have regard to the rights and interests of the members of the company, or of any class of them, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members; and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement:

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

(6) An office copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall, within thirty days from the date of the order, be filed by the company with the Registrar-General, and he shall register the copy so filed and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and henceforth the memorandum so altered shall be the memorandum of the company.

The court may by order at any time extend the time for the filing of documents with the Registrar-General under this section for such period as the court may think proper.

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(7) If a company makes default in filing with the Registrar-General any document required by this section to be filed with him the company and every officer who is in default shall be guilty of an offence.

Penalty: Ten pounds for every day during which the default continues.

16. There may, in the case of a company limited by shares, and there shall in the case of a company limited by guarantee or unlimited, be registered with the memorandum, articles of association prescribing regulations for the company.

Registration of
articles with
the memoran-
dum.
19 & 20 Geo.
V, c. 23, s. 6.
cf. 1899, No.
40, s. 12.

17. (1) In the case of an unlimited company the articles, if the company has a share capital, must state the amount of share capital with which the company proposes to be registered.

Unlimited
company or
company
limited by
guarantee.
19 and 20
Geo. V,
c. 23, s. 7.
cf. 1899, No.
40, s. 12.

(2) In the case of an unlimited company or a company limited by guarantee, the articles, if the company has not a share capital, must state the number of members with which the company proposes to be registered.

(3) Where a company not having a share capital 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, file with the Registrar-General a notice of the increase, and the Registrar-General shall record the increase.

If default is made in complying with this subsection, the company and every officer of the company who is in default shall be guilty of an offence.

18. (1) In the case of a company limited by shares articles of association may adopt all or any of the regulations contained in Table A in Schedule Two to this Act.

Table A.
Schedule
Two.
19 and 20
Geo. V,
c. 23, s. 8.
cf. 1899, No.
40, ss. 12,

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

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Form and
signature
of articles.
19 and 20
Geo. V,
c. 23, s. 9.
cf. 1899, No.
40, s. 14.

Alteration
of articles.
19 and 20
Geo. V,
c. 23, s. 10,
cf. 1899,
No. 40,
ss. 11, 72.

Form of
memorandum
and articles.
19 and 20
Geo. V,
c. 23, s. 11.

Schedule
Two.

Effect of
memorandum
and articles.
19 & 20
Geo. V,
c. 23, s. 20.
cf. 1899,
No. 40,
ss. 10, 14.

19. (1) Articles must be printed, and be divided into paragraphs numbered consecutively.

(2) Articles must be signed by each subscriber of the memorandum of association in the presence of at least one witness, not being a subscriber, who must attest the signature.

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

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

21. The form of—

- (a) the memorandum of association of a company limited by shares;
- (b) the memorandum and articles of association of a company limited by guarantee and not having a share capital;
- (c) the memorandum and articles of association of a company limited by guarantee and having a share capital;
- (d) the memorandum and articles of an unlimited company having a share capital;

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

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

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

23. (1) In the case of a company limited by guarantee and not having a share capital, and registered after the commencement of this Act, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.

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Provisions
as to
memoran-
dum and
articles of
companies
limited by
guarantee.

19 and 20
Geo. V,
e. 23, s. 21.

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

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

Increase of
liability.

19 and 20
Geo. V, e. 23,
s. 22.

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.

25. (1) A company shall, on being so required by any member, send to him a copy of the memorandum and of the articles, if any, and a copy of any Act of Parliament which alters the memorandum, subject to payment, in the case of a copy of the memorandum and of the articles, of one shilling or such less sum as the company may prescribe, and, in the case of a copy of an Act, of such sum not exceeding the published price as the company may require.

Copies of
memoran-
dum and
articles.

19 & 20
Geo. V,
e. 23, s. 23.

1899, No.
40, s. 233.

(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 guilty of an offence.

Penalty: One pound.

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Issued copies of memorandum and articles to embody alterations.

19 and 20 Geo. V, c. 23, s. 24

26. (1) Where an alteration is made in the memorandum or articles of a company, every copy of the memorandum or articles issued after the date of the alteration shall be in accordance with the alteration.

It shall be a sufficient compliance with this subsection with respect to the articles if a printed copy of the special resolution making the alteration is annexed to the copy of the articles and the particular articles affected indicated in ink.

(2) If, where any such alteration has been made, the company at any time after the date of the alteration issues any copies of the memorandum or articles which are not in accordance with the alteration, it shall be guilty of an offence, and every officer of the company who is in default shall be guilty of a like offence.

Penalty: One pound for each copy so issued.

DIVISION 3.—*Registration.*

Memorandum and articles.

19 and 20 Geo. V, c. 28, s. 12, cf. 1899, No. 40, s. 15.

Incorporation.

19 and 20 Geo. V, c. 23, s. 13

27. The memorandum and the articles, if any, shall be filed with the Registrar-General, and he shall retain and register them.

28. (1) On the registration of the memorandum of a company the Registrar-General shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited, and in the case of a proprietary company that the company is a proprietary company.

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

Power to hold land.
Ibid.

29. A company incorporated under this Act shall have power to hold lands.

30.

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30. (1) A certificate of incorporation given by the Registrar-General in respect of any association shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorised to be registered and duly registered under this Act.

Conclusive-
ness of
certificate
of incor-
poration.
19 and 20
Geo. V,
c. 23, s. 15.
1899, No. 40,
ss. 16 (3),
180.

(2) The Registrar-General may, if he thinks fit, require a statutory declaration to be made by a solicitor of the court engaged in the formation of the company, or by a person named in the articles as a director or secretary of the company, to be filed with him stating that all or any of the requirements mentioned in subsection one of this section have been complied with, and the Registrar-General may accept such a declaration as sufficient evidence of compliance.

31. (1) Subject to the provisions of this section a company registered as unlimited may register under this Act as limited, or a company already registered as a limited company may re-register under this Act, but the registration of an unlimited company as a limited company shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred or any contract entered into, by, to, with, or on behalf of the company before the registration, and those rights or liabilities may be enforced in manner provided by Part V of this Act in the case of a company registered in pursuance of that Part.

Registration
of unlimited
company as
limited.
19 and 20
Geo. V,
c. 23, s. 16.

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

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Restriction
on regis-
tra-
tion of
com-
pa-
ni-
es
by cer-
tain
names.
19 and 20,
Geo. V,
c. 23, s. 17.
1899, No.
40, s. 234.

32. (1) No company shall be registered by a name which—

- (a) is identical with that by which a company or a foreign company is already registered, or, in the opinion of the Registrar-General, so nearly resembles that name as to be calculated to deceive, except where the company or the foreign company is in the course of being dissolved and signifies its consent in such manner as the Registrar-General requires; or
- (b) is identical with that by which another company is proposed to be registered, and which is reserved in pursuance of subsection three of this section, or which, in the opinion of the Registrar-General, so nearly resembles that name as to be calculated to deceive; or
- (c) is identical with any name registered or deemed to be registered under the Business Names Act, 1934, or, in the opinion of the Registrar-General, so nearly resembles that name as to be calculated to deceive:

Provided that if the Registrar-General is satisfied that a company is being registered for the purpose of taking over any business which is carried on under a business name registered or deemed to be registered under that Act, and will be entitled as against the proprietor of that name to use that name, he may register the company by that name; or

- (d) contains the words "Chamber of Commerce," or "Chamber of Manufactures," unless the company is a company which is to be registered under a license granted in pursuance of section thirty-four of this Act without the addition of the word "Limited" to its name; or
- (e) contains the words "Building Society"; or
- (f) includes the word "Proprietary" or any abbreviation thereof unless the company complies with the provisions of paragraph (a) of subsection one of section thirty-seven of this Act;
- (g)

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S.A. No.
2199, s. 3.

- (g) is identical with that of any friendly society or branch registered under the Friendly Societies Act, 1912-1935, or which, in the opinion of the Registrar-General so nearly resembles that name as to be calculated to deceive unless the registration is applied for by the society in accordance with section sixty-one of that Act;
- (h) in the opinion of the Registrar-General is likely to mislead the public as to the nature or the objects of the company; cf. Act No. 50, 1934,
s. 24 (1)
(d).
- (i) in the opinion of the Registrar-General is *Ibid.* offensive or blasphemous.

(2) Except with the consent of the Governor no company shall be registered by a name which—

- (a) contains the words “Royal” or “Imperial” or in the opinion of the Registrar-General suggests, or is calculated to suggest, the patronage of His Majesty or of any member of the Royal Family or connection with the Government or any department thereof in any part of His Majesty’s Dominions; or
- (b) contains the words “Municipal” or “Chartered” or in the opinion of the Registrar-General suggests, or is calculated to suggest, connection with any municipality or other local authority or with any society or body incorporated by royal charter; or
- (c) contains the word “Co-operative”; or
- (d) contains the words “Trust” or “Trustee.”

(3) A solicitor engaged in the formation of a company, or a person named in the proposed articles as the secretary of a proposed company, may file with the Registrar-General a prescribed notice specifying the name by which it is proposed that such company shall be registered, and if that name is not identical with that by which a company already in existence is registered or with a name already reserved, or does not, in the opinion of the Registrar-General, so nearly resemble any such name as to be calculated to deceive, or does not otherwise contravene the provisions of this section, the name shall for thirty days from the date of filing of the notice be reserved for the company in respect of which the notice is filed.

No. 32, 1926.

Penalty for
unlawful
use of word
"Limited."
19 and 20
Geo. V, c. 23,
s. 364.

33. Every person who trades or carries on business under any name or title of which the word "Limited" or any contraction or imitation of that word is the last word or under any name or title in which the word "Limited" or any contraction or imitation thereof is so used as to indicate or suggest that the liability of such person is limited, shall unless duly incorporated with limited liability under this or some other Act or registered under Part VI of this Act be guilty of an offence.

Penalty: Five pounds for every day upon which that name or title is used.

Dispensing
with
"Limited."
19 and 20
Geo. V,
c. 23, s. 18.
1899, No.
40, s. 52.

34. (1) Where it is proved to the satisfaction of the Governor that an association about to be formed as a limited company is to be formed for the purposes of recreation or amusement, or for promoting commerce, industry, 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 paying of any dividend to its members, the Governor may by license direct that the association 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, but no such license shall be granted unless the Governor is satisfied that there is no other association with similar objects of which the members of the proposed company might become members upon reasonable terms and conditions.

(2) A license by the Governor under subsection one of this section may be granted on such conditions and subject to such regulations as the Governor thinks fit, and those conditions and regulations shall be binding on the association, and shall, if the Governor so direct, be inserted in the memorandum and articles, or in one of those documents.

Upon the application for any such license there shall be paid a fee of five guineas or such other less fee as may be prescribed.

(3) The association shall on registration enjoy all the privileges of limited companies, and be subject to all their obligations, except those of using the word "Limited" as any part of its name, and of publishing its

its name, and of sending lists of members to the Registrar-General, and of sending to the members a copy of the balance sheet pursuant to paragraph (a) of subsection one of section one hundred and eleven.

(4) A license under subsection one of this section or under section fifty-two of the Companies Acts may at any time be revoked by the Governor, and upon revocation the Registrar-General shall enter the word "Limited" at the end of the name of the association upon the register, and the association shall cease to enjoy the exemptions and privileges granted by this section:

Provided that before a license is so revoked the Minister shall give to the association notice in writing, and the Governor shall afford the association an opportunity of being heard in opposition to the revocation.

(5) Where the name of the association contains the words "Chamber of Commerce" or "Chamber of Manufactures," the notice to be given under subsection four of this section shall include a statement of the effect of the provisions of subsection three of section thirty-five of this Act.

(6) No association while holding a license under subsection one of this section or under section fifty-two of the Companies Acts shall without the sanction of the Governor hold more than two acres of land:

Provided that the Governor may by license in the form prescribed, empower any such association to hold land in such quantities and subject to such conditions as he may think fit.

Nothing in this subsection shall extend to an association formed for the purpose of promoting religion.

35. (1) A company may, by special resolution, and with the approval of the Governor, change its name. Change of name.

19 and 20,

Geo. V,

c. 23, s. 19.

1899, No.

40, s. 225.

(2) If a company, through inadvertence or otherwise, is, without such consent as is mentioned in paragraph (a) of subsection one of section thirty-two of this Act, registered by a name which is identical with that by which a company in existence is previously registered

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registered or which in the opinion of the Registrar-General so nearly resembles that name as to be calculated to deceive, the first-mentioned company may by special resolution change its name with the sanction of the Registrar-General, and the approval of the Governor shall not be required.

(3) Where a license granted in pursuance of section thirty-four of this Act or in pursuance of the Companies Acts, to a company the name of which contains the words "Chamber of Commerce" or "Chamber of Manufactures" is revoked the company shall, within a period of six weeks from the date of the revocation or such longer period as the Minister may think fit to allow, change its name to a name which does not contain those words.

If a company makes default in complying with the requirements of this subsection, it shall be guilty of an offence.

Penalty: Fifty pounds for every day during which the default continues.

(4) Where a company changes its name the Registrar-General 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 the identity of the company or any rights or obligations of the company, or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name.

Membership
of company.
19 and 20
Geo. V,
c. 23, s. 25.
1899, No.
40, s. 18.

36. (1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.

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

DIVISION

DIVISION 4.—*Proprietary companies.*

37. (1) For the purposes of this Act the expression “ proprietary company ” means any company limited by shares not being a no-liability company which—

Proprietary
companies.
Vic. No.
3,659, s. 130.

- (a) by its memorandum or articles—
 - (i) restricts the right to transfer its shares;
and
 - (ii) limits the number of its members (exclusive of persons who are in the employment of the company, and of persons who having been formerly in the employment of the company, were while in that employment and have continued after the determination of that employment to be members of the company) to fifty; and
 - (iii) prohibits any invitation to the public to subscribe for any shares or debentures of the company, or to deposit money with the company for fixed periods or payable at call, whether bearing or not bearing interest; and
- (b) has received a certificate of incorporation in which the Registrar-General certifies that the company is a proprietary company.

(2) The word “Proprietary” or the abbreviation thereof “Pty.” shall form part of the name of a proprietary company, and shall be inserted immediately before the word “Limited.”

(3) A company limited by shares not being a no-liability company may by special resolution alter—

- (a) the name of the company by inserting the word “Proprietary” or the abbreviation thereof “Pty.” immediately before the word “Limited”; and
- (b) the provisions of its memorandum or articles so as to restrict, limit, and prohibit, as provided in subsection one of this section:

Provided that in the case of an existing company the provision of sub-paragraph (ii) of paragraph (a) of that subsection shall be regarded as satisfied if—

- (a) the number of members is limited to one hundred instead of to fifty;
- (b)

(b) the approval of the Governor is first obtained; and

(c) the application to register as a proprietary company is made within twelve months of the commencement of this Act.

(4) Upon the application of a company and upon the filing of an office copy of the order confirming any alteration of the memorandum, or the filing of a printed copy of the resolution, as the case may be, together with a statutory declaration by a director or manager of the company that the memorandum or articles of association of the company so restrict, limit and prohibit, the Registrar-General may issue a certificate of incorporation altered so as to certify that the company is a proprietary company.

(5) A proprietary company may, subject to anything contained in the memorandum or articles, by a special resolution, determine—

(a) that the word "Proprietary" or the abbreviation thereof "Pty." be omitted from its name; and

(b) that the company be a public company,

and by filing with the Registrar-General a copy thereof, and also such a statement in lieu of prospectus as the company (if a public company) would have had to file before allotting any of its shares or debentures, such statement being in the form set out in Schedule Four to this Act, together with such a statutory declaration as the company (if a public company) would have had to file before commencing business, turn itself into a public company; and thereupon the restrictions, limitations, and prohibitions mentioned in subsection one of this section and embodied in the memorandum or articles of association of such company, shall cease to apply to that company.

(6) Any existing company whose name includes the word "Proprietary" or any abbreviation thereof shall, unless its memorandum or articles conform to

the

the provisions of paragraph (a) of subsection one of this section, within six months after the commencement of this Act by special resolution—

- (a) alter its memorandum or articles so as to conform thereto; or
- (b) with the sanction of the Registrar-General change its name, omitting the word "Proprietary" or any abbreviation thereof.

The provisions of subsection four of this section shall extend to any such alteration.

If a company makes default in complying with the provisions of this subsection it shall be guilty of an offence.

Penalty: Fifty pounds for every day during which the default continues.

(7) An alteration of a memorandum pursuant to this section other than a change of the name of the company shall not be effective until confirmed by the court and an office copy of the order is filed with the Registrar-General.

38. Where two or more persons hold one or more shares in a proprietary company jointly they shall for the purposes of section thirty-seven of this Act be treated as a single member.

39. The court may, on the application of the Attorney-General or of any member or creditor of any company certified by the Registrar-General to be a proprietary company, determine whether the company is a proprietary company within the meaning of this Act, and if the court determines that it is not a proprietary company it shall declare accordingly, and order that the word "Proprietary" be removed from its name; and thereupon the company shall be a public company under this Act and subject to all the provisions and conditions of this Act relating to public companies.

An office copy of the order shall be filed by the applicant with the Registrar-General within thirty days from the date of the order.

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Alterations
to memo-
randum and
articles of
proprietary
companies.

40. (1) Where any alteration has been made under section thirty-seven of this Act in the memorandum or articles of a company, every copy of the memorandum or articles issued after the date of the alteration shall be in accordance with the alteration.

It shall be a sufficient compliance with this subsection with respect to the articles if a printed copy of the special resolution making the alteration is annexed to the copy of the articles and the particular articles affected indicated in ink.

(2) Where the memorandum or articles of a company includes the provisions which by section thirty-seven of this Act are required to be included therein in order to constitute the company a proprietary company, and default is made in complying with any of those provisions the company shall thereupon cease to be entitled to the privileges and exemptions conferred on proprietary companies under the provisions contained in subsection three of section ninety, section one hundred and eleven, section one hundred and twenty, paragraph (d) of section two hundred and eight and section three hundred and forty-seven of this Act and thereupon the said provisions shall apply to the company as if it were a public company:

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

(3) If any company, being a proprietary company, alters its memorandum or articles in such manner that they no longer include the provisions which, under section thirty-seven of this Act, are required to be included in the memorandum or articles of a company in order to constitute it a proprietary company for the purposes of this Act, the company shall, as on the date of the alteration, cease to be a proprietary company, and shall, within a period of seven days after that date, file with the Registrar-General such a statement in lieu of

prospectus

prospectus as the company, if a public company would have had to file before allotting any of its shares or debentures (such statement being in the form set out in Schedule Four to this Act) together with such a statutory ^{Schedule} ~~Four.~~ declaration as the company if a public company would have had to file before commencing business.

(4) The approval of the Governor shall not be required to a change of name pursuant to any provision of this Division.

Subsection four and subsection five of section thirty-five shall extend to cases in which the name of a company is changed pursuant to any provision of this Division.

(5) If a company makes default in complying with any requirement of this section, the company, and every officer of the company who is in default, shall be guilty of an offence.

Penalty: Twenty pounds.

PART IV.

NO-LIABILITY COMPANIES.

41. (1) Subject to this Part, every company registered under this Part, and every member thereof, shall have and be entitled to the same rights and liabilities as if the company had been registered under Division 3 of Part III of this Act.

(2) In the construction and for the purposes of this Part of this Act the expression—

“Contributing capital” shall mean the whole of the nominal capital of the company as stated in the memorandum for registration, or increased ^{1899, No. 40, s. 187.} nominal capital, as the case may be, excepting and deducting—

(a) such part thereof as is represented by all shares (if any) which for some consideration other than cash are issuable by the company as fully paid up;

(b).

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(b) such part thereof as is represented by the paid-up portion of all shares (if any) which for some consideration other than cash are issuable by the company as partly paid up.

(3) For the purposes of this section no shares shall be issuable as fully paid up or partly paid up for a consideration other than cash unless such consideration shall be fully disclosed by some contract filed with the Registrar-General at or before the issue of such shares.

No-liability system.1899, No. 40,
s. 188.

42. Companies having their capital divided into shares may be incorporated under this Part for the purposes of mining in New South Wales or elsewhere and of treating, selling or otherwise disposing of ores, metals, minerals and all products of mining, and with all powers necessary for or incidental to carrying on the business of mining in New South Wales or elsewhere.

Shareholder not liable to calls or contributions.
cf. *Ibid.*
s. 194.

43. The acceptance of a share in a no-liability company whether by subscription to the memorandum for registration or by original allotment or by transfer or otherwise shall not be deemed to create a contract on the part of the person accepting the same to pay any calls or other moneys in respect thereof or any contribution to the debts and liabilities of the company, and that person shall not be liable to be sued for any such calls or other moneys or contributions, but he shall not be entitled to a dividend upon any share upon which a call is due and unpaid.

Application of Act to no-liability companies.
cf. *Ibid.*
s. 189,
et seq.

44. (1) Subject to section forty-three of this Act and except where otherwise expressly provided, the provisions of this Act relating to companies limited by shares shall apply in relation to no-liability companies, subject to the following qualifications and modifications, namely:—

- (a) Ten per centum of the contributing capital shall be actually paid up in cash prior to the filing of the memorandum.
- (b) The memorandum of the company shall, instead of containing a statement that the liability of the members is limited, contain a statement that the members incur no liability and shall be as nearly as possible in the form contained in Part I of Table F of Schedule Two to this Act.

(c)

Schedule Two.

(c) A statutory declaration, in or to the effect of the form in the said Part, shall be made by one of the subscribers to the memorandum, or by the manager or provisional manager of the proposed company, verifying the statements in the memorandum, and shall be filed with the Registrar-General at the time of the filing of the memorandum.

The Registrar-General may require such further evidence verifying the statements as he thinks fit.

(d) (i) Within twenty-one days of the filing of the memorandum and declaration a copy of each shall be published in the Gazette and in at least two newspapers circulating in the town or district in which the company's registered office is to be situated.

(ii) Within twenty-one days after such publication copies of such Gazette and newspapers shall be filed with the Registrar-General, and upon the Registrar-General issuing a certificate of incorporation the company shall be incorporated.

(e) The certificate of incorporation shall state that the company is a no-liability company and shall refer to the Gazette and newspapers filed in which the memorandum for registration has been advertised and shall state their respective dates and the date of incorporation.

(f) The rules of the company may adopt all or any of the regulations contained in Part II of Table F in Schedule Two to this Act.

If rules are not filed with the memorandum or if rules are filed then in so far as they do not exclude or modify the provisions contained in the said Table F the provisions contained in that Table shall, so far as the same are applicable, be deemed to be the rules of the company.

(g) Whenever by this Act the word "Limited" is required to be added to the name of a company, the words "No Liability" shall be added instead thereof, and the consequences of omitting to add those

cf. 1899,
No. 40,
s. 191.

cf. *Ibid.*
s. 206.

Schedule
Two.

Old 22 Geo.
V, No. 53,
s. 313 (c).

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those words in any case shall be the same as the consequences of omitting to add the word "Limited" in the case of limited companies formed under this Act.

**1899, No.
40, s. 199.**

- (h) (i) Any director, manager, secretary, or agent of a company to which this Part of this Act applies engaging workmen, or ordering services, goods, plant, or other articles whatsoever for the purposes of the company shall do so on paper bearing the company's name, including the words "No Liability."
- (ii) If workmen be engaged, or services, goods, plant, or other articles whatsoever be ordered otherwise than as aforesaid, the person engaging such workmen, or ordering such services, goods, plant, or articles shall be personally liable in the event of the company failing to pay.
- (i) (i) The calls upon shares in every company to which this Part of this Act applies shall be made in such time and manner that they shall become due on the second Wednesday in a month, and on that day only:

Provided that if such Wednesday is a public holiday, they shall become due on the next succeeding week-day which is not a public holiday.
- (ii) A notice shall be printed on the face of the company's share certificates stating that the day above mentioned is the day on which calls fall due.
- (iii) When a call has been made, not less than fourteen days' notice of the day when it will fall due and of the place for payment thereof shall be published in two daily newspapers published in Sydney, and if the company's registered office is situated outside Sydney, then also in a newspaper circulating in the town or district in which the company's registered office is situated.

(iv)

Call to be
due on the
second
Wednesday
in any
month.
Ibid. s. 200.

- (iv) In addition to the publication of such notices fourteen days' notice of any call shall be served by the company on each member personally or by sending the same through the post (postage prepaid) addressed to such member at his address as entered in the register of members, and such notice shall specify the amount of the call and the time and place of payment.
- (v) Such notice shall be deemed to have been duly served if posted in New South Wales not less than seventeen days prior to the due date of such call.
- (j) When a call has been made no subsequent call shall be made until after the expiration of fourteen days from the day when the first-mentioned call has become due.
- (k) (i) Any share upon which a call has remained unpaid for twenty-one days after the due date of such call shall thereupon be absolutely forfeited without any resolution of directors or other proceeding.
- (ii) Such share when forfeited shall be sold by public auction, notice whereof shall be advertised in two daily newspapers published in Sydney, and if the company's registered office is situated outside Sydney, then also in one issue of a newspaper circulating in the town or district in which the company's registered office is situated, and the last of such advertisements being not less than seven days before the day appointed for the sale.
- (iii) Every such advertisement shall state the number in the company's share register of the share so forfeited.
- (iv) The proceeds shall be applied in payment of all overdue calls unpaid thereon, and of any expenses necessarily incurred in respect of the forfeiture, and the balance (if any) shall be paid to the person whose share has been

No call to be
made until
fourteen days
after previous
call be-
comes due.
1899, No.
40, s. 201.

Forfeiture
of shares.
Ibid. s. 202.

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been so forfeited on his delivering to the company the certificate representing the forfeited share.

- (v) A new certificate may be issued by the directors for such forfeited share in place of the certificate delivered to the company or held by the person whose share has been so forfeited as aforesaid.
- (vi) If the amount bid for such forfeited share is not sufficient to satisfy all overdue calls unpaid thereon with such expenses as aforesaid, the directors of the company may refuse to sell such share, and in such case they may thereafter sell such share in such manner as they think fit.
- (vii) The directors shall at any time before any such forfeited share has been sold annul the forfeiture thereof upon payment of the amount of all overdue calls thereon, together with all such expenses as aforesaid.
- (viii) A sale may be made of forfeited shares of various shareholders together or in various parcels.
- (ix) In advertising notice of any intended sale of any shares with consecutive numbers it shall be sufficient to state the first and last of the consecutive numbers as follows: [Numbered from () to (), both inclusive].
- (l) Where a company to which this Part of this Act applies increases its capital then before the allotment or issue of any new shares, ten per centum of the contributing capital (if any) represented by such new shares shall be paid up to the company in cash, and a statutory declaration in that behalf in the prescribed form shall be made by a director or by the manager of the company and filed with the Registrar-General and a certificate in the prescribed form issued by him that the requirements of this Act with regard to the increase have been complied with.

(m)

cf. 1899,
No. 40,
s. 210.

(m) (i) On the winding-up of the company, but subject to the rights of the holders of shares issued on special conditions, the surplus assets shall be distributed among all classes of shareholders alike irrespective of the amount called up on the respective shares or classes of shares.

(ii) No member who is in arrear in payment of any call, but whose shares have not been actually forfeited, shall be entitled to share in such distribution until the amount owing in respect of such call has been fully paid and satisfied.

(iii) Nothing in this paragraph contained shall prevent the distribution of such surplus in a different manner from that herein provided, where a different mode of distribution is expressly provided for in the rules as originally framed, or shall prevent the holder of any share wholly or in part actually paid in advance from sharing in the surplus in respect of every such payment.

(n) The requirement of paragraph (a) of subsection one of section seventy-eight as to the statement of the amount paid or agreed to be considered as paid on the shares of each member shall be deemed to have been complied with if there is entered in the register of members to be kept pursuant to that section, a statement of the amount paid up or deemed to have been paid up on the shares of each member at the date of allotment of such shares, and there is entered in the first sheet of the register a summary of all calls made by the company showing the shares in respect of which each call was made, the number of each call and the respective dates when each call was made and was payable.

(2) When a share in a no-liability company held by a person in the State has become forfeited for default in payment of a call or has been declared forfeited for any other cause prescribed by the articles of the company as

cf. 1899,
No. 40,
s. 220.

cf. S.A. No.
2196, s. 119
(1) (a).

cf. Qd. 22
Geo. V, No.
53, s. 314.

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as a cause of forfeiture, any action against the company or any person in respect of that forfeiture shall be commenced within six months after the forfeiture for default in payment of the call or within six months after notice of the resolution of the directors declaring the forfeiture has been served upon the holder of the shares personally or by post, and not afterwards; or, if the holder is outside the State and within the Commonwealth the action shall be commenced within nine months and not afterwards, or if the holder is beyond the Commonwealth, then the action shall be commenced within twelve months and not afterwards.

**Schedule
Three.**

(3) The provisions of Schedule Three to this Act shall apply to and in respect of companies to which this Part of this Act applies.

PART V.

REGISTRATION OF COMPANIES NOT FORMED UNDER THIS ACT.

Companies
capable of
being
registered.
19 and 20
Geo. V, c.
23, s. 321.
1899, No.
40, ss. 167,
168.

45. (1) With the exceptions and subject to the provisions contained in this section, any company formed, whether before or after the commencement of this Act, in pursuance of any Act or Imperial Act, or of letters patent, or being otherwise duly constituted according to law, and consisting of seven or more members, may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee:

Provided that—

- (a) a company registered or deemed to be registered under the Companies Acts shall not register in pursuance of this section;
- (b) a company having the liability of its members limited by Act or Imperial Act or by letters patent, and not being a joint stock company as defined in this Part, shall not register in pursuance of this section;

(c)

- (c) a company having the liability of its members limited by Act or Imperial Act or by letters patent shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee;
- (d) a company that is not a joint stock company as defined in section forty-seven of this Act shall not register in pursuance of this section as a company limited by shares;
- (e) a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person or by proxy (in cases where proxies are allowed by the regulations of the company) at a general meeting summoned for the purpose;
- (f) where a company not having the liability of its members limited by Act or Imperial Act or by letters patent is about to register as a limited company, the majority required to assent as provided in paragraph (e) of this proviso shall consist of not less than three-fourths of the members present in person or by proxy at the meeting; and
- (g) where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceased to be a member, and of the costs and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as is required, not exceeding a specified amount.

(2) In computing any majority under this section when a poll is demanded regard shall be had to the number of votes to which each member is entitled according to the regulations of the company.

(3)

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(3) Nothing in this Part shall affect the operation of section seventy of the Co-operation Act, 1923-1935.

Registration
for purpose
of winding
up.

46. The registration of a company in pursuance of this Part shall not be invalid by reason only that it has been effected with a view to the company being wound up.

Definition of
joint stock
company.
19 and 20
Geo. V, c.
23, s. 322.
1899, No. 40,
s. 169.

47. For the purposes of this Part "a joint stock company" in relation to registration of companies as companies limited by shares means a company having a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons, and such a company when registered with limited liability under this Act shall be deemed to be a company limited by shares.

Require-
ments for
registration
by joint
stock
companies.
19 and 20
Geo. V, c.
23, s. 323.
1899, No. 40,
s. 171.

48. Before the registration in pursuance of this Part of a joint stock company, there shall be filed with the Registrar-General the following documents:—

- (a) a list showing the names, addresses, and occupations or descriptions of all persons who on a day named in the list, not being more than six clear days before the day of such filing, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number;
- (b) a copy of any Act, Imperial Act, royal charter, letters patent, deed of settlement, or other instrument constituting or regulating the company; and
- (c) if the company is intended to be registered as a limited company, a statement specifying the following particulars:—
 - (i) the nominal share capital of the company and the number of shares into which it is divided, or the amount of stock of which it consists;
 - (ii)

(ii) the number of shares taken and the ^{No. 33, 1936.} amount paid on each share;

(iii) the name of the company, with the addition of the word "Limited" as the last word thereof; and

(iv) in the case of a company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee.

49. Before the registration in pursuance of this Part of any company not being a joint stock company, there shall be filed with the Registrar-General—

(a) a list showing the names, addresses, and occupations or descriptions of the directors or other managers (if any) of the company; and

(b) a copy of any Act, Imperial Act, royal charter, letters patent, deed of settlement, or other instrument constituting or regulating the company; and

(c) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

50. The lists of members and directors and any other particulars relating to the company required to be filed with the Registrar-General shall be verified by a statutory declaration of any two or more directors or other principal officers of the company.

51. The Registrar-General may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint stock company as defined in section forty-seven of this Act.

52. When a company registers in pursuance of this Part with limited liability, the word "Limited" shall form, and be registered as, part of its name.

Requirements
for registration
by other than
joint stock
companies.

19 and 20 Geo.
V, c. 23, s. 324.
1899, No. 40,
s. 172.

Authentication
of statements.
19 and 20
Geo. V, c. 23,
s. 325.
1899, No. 40,
s. 174.

Registrar-
General may
require evi-
dence as to
nature of
company.
19 and 20
Geo. V, c. 23,
s. 326.
1899, No. 40,
s. 175.

Addition of
"Limited" to
name.
19 and 20
Geo. V, c. 23,
s. 328.
1899, No. 40,
s. 178.

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Certificate of registration of company registered under Part V.

19 and 20
Geo. V, c. 23,
s. 329.

1899, No. 40,
s. 179.

Vesting of property on registration.

19 and 20
Geo. V, c. 23,
s. 330.

1899, No. 40,
s. 181.

Saving for existing liabilities.

19 and 20
Geo. V, c. 23,
s. 331.

1899, No. 40,
s. 182.

Continuation of actions.

19 and 20
Geo. V, c. 23,
s. 332.

1899, No. 40,
s. 183.

53. On compliance with the requirements of this Part with respect to registration, the Registrar-General shall certify under his hand that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited, and thereupon the company shall be so incorporated.

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

55. Registration of a company in pursuance of this Part shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of, the company before registration.

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

Provided that execution shall not issue against the effects of any individual member of the company on any judgment, decree, or order obtained in any such action or proceeding, but, in the event of the property and effects of the company being insufficient to satisfy the judgment, decree, or order, an order may be obtained for winding up the company.

57. (1) When a company is registered in pursuance of this Part, the provisions of this section shall have effect.

(2) All provisions contained in any Act, Imperial Act, or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if

so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles.

(3) All provisions of this Act shall apply to the company and the members, contributories, and creditors thereof in the same manner in all respects as if it had been formed under this Act, subject as follows:—

- (a) Table A shall not apply unless adopted by special resolution;
- (b) the provisions of this Act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered;
- (c) subject to the provisions of this section and of section fifty-eight, the company shall not have power to alter any provision contained in any Act or Imperial Act relating to the company;
- (d) subject to the provisions of this section the company shall not have power, without the sanction of the Governor, to alter any provision contained in any letters patent relating to the company;
- (e) the company shall not have power to alter any provision contained in a royal charter or letters patent with respect to the objects of the company;
- (f) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs and expenses of winding up the company, so far as relates to those debts or liabilities; but a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up; and

(g)

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(g) in the event of the company being wound up, every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability, and, in the event of the death or bankruptcy of any contributory, or the marriage of any female contributory, the provisions of this Act with respect to the personal representatives, to the trustees of bankrupt contributories, and to the liabilities of husbands and wives respectively, shall apply.

(4) The provisions of this Act with respect to—

- (a) the registration of an unlimited company as limited;
- (b) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up;
- (c) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding up; and
- (d) the power of a company limited by shares and so authorised by its articles to alter its share capital pursuant to section one hundred and fifty-three of this Act,

shall apply notwithstanding any provisions contained in any Act, Imperial Act, royal charter, or other instrument constituting or regulating the company.

(5) Nothing in this section shall authorise the company to alter any such provisions contained in any instrument constituting or regulating the company, as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act.

(6) Nothing in this Act shall derogate from any power of altering its constitution or regulations which may, by virtue of any Act, Imperial Act, or other instrument constituting or regulating the company, be vested in the company.

58. (1) Subject to the provisions of this section, a company registered in pursuance of this Part may by special resolution confirmed by the Court alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.

(2) The provisions of this Act with respect to confirmation by the court and registration of an alteration of the objects of a company shall so far as applicable apply to an alteration under this section with the following modifications:—

- (a) there shall be substituted for the copy of the altered memorandum required to be filed with the Registrar-General a copy of the substituted memorandum and articles; and
- (b) on the registration of the alteration being certified by the Registrar-General, the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company.

(3) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act.

(4) In this section the expression "deed of settlement" includes any Act or other instrument whatsoever constituting or regulating the company, not being an Imperial Act, a royal charter, or letters patent.

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

60. Where an order has been made for winding up a company registered in pursuance of this Part, no action or proceeding shall be commenced or proceeded with against the company or any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court imposes.

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Power to substitute memorandum and articles for deed of settlement.

19 and 20 Geo. V, c. 23, s. 334.

Power of court to stay or restrain proceedings.

19 and 20 Geo. V, c. 23, s. 335.

Actions stayed on winding-up order.

19 and 20 Geo. V, c. 23, s. 336.

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PART VI.

FOREIGN COMPANIES.

Companies to
which Part
applies.

cf. 19 and 20
Geo. V, c. 23,
s. 343.
1906, No. 22,
s. 7.

Vict. Act No.
3659, s. 270,
as inserted by
Act No. 4005

Documents,
etc., to be
delivered to
Registrar-
General by
foreign
companies
carrying on
business in
State.

19 and 20
Geo. V, c. 23,
s. 344.

61. This Part shall apply to every company incorporated outside the State which, after the commencement of this Act, establishes a place of business or commences to carry on business within the State, and to every company incorporated outside the State which has, before the commencement of this Act, established a place of business or has commenced to carry on or has carried on business within the State, and which continues to carry on business within the State after the commencement of this Act.

62. Every company to which this Part applies shall within one month from the date of the establishment of a place of business or the commencement to carry on business, or in the case of companies carrying on business in the State at the commencement of this Act within six months after the commencement of this Act, register under this Part and file with the Registrar-General for registration—

- (a) a certified copy of the certificate of incorporation of the company or a document of similar effect;
- (b) a certified copy of the charter, statute or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the English language, a certified translation thereof;
- (c) a list of the directors of the company in the country in which it is incorporated (and also of any local directors in this State) containing such particulars with respect to the directors as are by this Act required to be contained with respect to directors in the register of the directors of a company;
- (d) where there are directors in the State a memorandum stating the powers of the local directors, or a certified copy of any instrument conferring and defining such powers;
- (e)

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- (e) a copy of a memorandum of appointment or of a power of attorney under the seal of the company, or executed in such manner as to be binding on the company, in either case verified in the prescribed manner, authorising some one or more persons resident in the State to accept on behalf of the company service of process and any notices required to be served on the company which person or persons shall be deemed to be the agent or agents of the company for the purposes of this Act;
- (f) notice of the situation of its registered office and of the days and hours during which it is accessible to the public, and of the place of abode or of business of the agent of the company; and
- (g) a statutory declaration made and signed by the agent of the company in accordance with Form A in Schedule Five:

Schedule Five.

Provided that if any such company is at the commencement of this Act registered under Part III of the Companies (Amendment) Act, 1906, it shall be sufficient compliance with this subsection if the company files with the Registrar-General such of the documents and particulars specified in this section as it has not already registered under that Act and until the expiration of the period of six months from the commencement of this Act the company shall be deemed to have complied with the provisions of this Part.

63. (1) Every company to which this Part applies shall have a registered office in the State.

Company to have registered office.

(2) The office shall be accessible to the public for not less than three hours between the hours of eight o'clock in the morning and six o'clock in the evening each day for at least five days each week, save on bank holidays:

Provided, however, that the office may be closed in any one year for not more than fourteen consecutive days.

(3) All communications and notices to the company may be addressed to the company at its registered office.

64.

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 Certificate
 of
 registration.
 Schedule
 Five.

Power of
 companies
 to hold lands.
 c. 19 & 20
 Geo. V,
 c. 23, s. 345.

Service on
 agent or at
 office, good
 service on
 company.

Return to be
 filed with
 Registrar-
 General
 where
 documents,
 etc., altered.
 19 and 20
 Geo. V, c.
 23, s. 346.

64. (1) On the registration of a company under this Part the Registrar-General shall certify accordingly under his hand in accordance with Form B in Schedule Five.

(2) A certificate under this section or a copy thereof certified under the hand of the Registrar-General shall be *prima facie* evidence in all legal proceedings that the company is formed or incorporated and is duly registered under this Part, that the person therein named as agent is the agent of the company in the State, and that the address of the agent in the State is situate as therein stated, and of all other particulars mentioned in the certificate.

65. A company registered or deemed to be registered under this Part, shall have the same power to hold lands in the State as if it were a company incorporated under this Act.

66. Any process or notice required to be served on a company registered under this Part shall be sufficiently served—

- (a) if addressed to the company and left at or sent by registered post to the registered office of the company; or
- (b) if addressed to any person whose name has been filed under section sixty-two of this Act as agent of the company and left at or sent by registered post to the registered office of the company.

67. (1) If in the case of any company to which this Part applies any alteration is made in—

- (a) the charter, statutes, or memorandum and articles of the company or other instrument constituting or defining the constitution of the company;
- (b) the directors of the company or the particulars contained in the list of the directors;
- (c) the names or places of abode or business of the persons authorised to accept service on behalf of the company;
- (d)

(d) the situation of its registered office, or the hours ^{No. 33, 1936.} when that office is accessible to the public; or

(e) the name of the company;

the company shall, within three months of the making of the alteration or within such further time as the Registrar-General may in a particular case allow, file with the Registrar-General a return containing the prescribed particulars of the alteration.

(2) A return pursuant to paragraph (d) or paragraph (e) of subsection one of this section shall be advertised by the Registrar-General at the cost of the company in the Gazette and in two daily newspapers published in Sydney and where the registered office of the company is situated more than fifty miles from Sydney in addition in a newspaper published in the district in which that office is situated.

68. (1) Every company to which this Part applies shall in every calendar year make out a balance-sheet in such form, and containing such particulars and including such documents, as under the provisions of this Act it would, if it had been a company within the meaning of this Act, have been required to make out and lay before the company in general meeting, and within three months of the making out of every such balance-sheet file a copy of that balance-sheet with the Registrar-General for registration.

Balance
sheet of
company
carrying on
business in
State.
19 and 20
Geo. V, c. 28,
s. 347.
Vict. Act.
No. 4005.
s. 7, substi-
tuting s. 270
(9) of Act
No. 3659.

(2) If any such balance-sheet is not written in the English language, there shall be annexed to it a certified translation thereof.

(3) Where the only business carried on in the State by a company is the selling of goods, wares and merchandise by an agent the provisions of this section shall not apply to the company.

(4) This section shall not apply to a company incorporated in Great Britain or in any British dominion or possession as a private or proprietary company which by the law of the place in which it is incorporated is not required to publish its balance-sheet or lodge the same in a public office.

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Obligation
to state
name of
company,
whether
limited, and
country
where
incor-
porated.

19 and 20
Geo. V, c.
23, s. 348.

69. Every company to which this Part applies shall—

- (a) in every prospectus inviting subscriptions in the State for its shares or debentures, set forth the name of the company, the situation of its registered office in the State, and the country in which the company is incorporated;
- (b) conspicuously exhibit on every place where it carries on business in the State the name of the company and the country in which the company is incorporated;
- (c) cause the name of the company and of the country in which the company is incorporated to be stated in legible characters in all bill-heads and letter-paper, and in all notices, advertisements, and other official publications of the company; and
- (d) if the liability of the members of the company is limited (unless the last word of the name of the company is the word “Limited”) cause notice of that fact to be stated in legible characters in every such prospectus and in all bill-heads, letter-paper, notices, advertisements and other official publications of the company in the State, and to be affixed on every place where it carries on its business.

Prohibition
against cer-
tain com-
panies
carrying on
business.
S.A. No.
2199, s. 9.

70. No company to which this Part applies and the name of which is identical with that of any society or branch registered under the Friendly Societies Act, 1912-1935, or the name of which so nearly resembles the name of any such friendly society as to be calculated to deceive shall carry on business or establish or keep a place of business within this State.

Every company which contravenes the provisions of this section and every officer or agent of the company knowingly concerned in the contravention of this section shall be guilty of an offence.

Penalty: In the case of a company, five hundred pounds, and one hundred pounds for every day during which the offence is continued.

In

In the case of an individual, twenty pounds, and ten pounds for every day during which the offence is continued.

71. (1) A company to which this Part applies may be wound up by the court under Part XI of this Act so far as that company carries on operations or has assets in the State.

(2) The powers conferred on the court by subsection one of this section may be exercised notwithstanding that the company may have been dissolved or has otherwise ceased to exist as a company under or by virtue of the laws of the country in which it was incorporated or formed, and for the purposes of the winding up and of any proceeding therein or arising thereout, or taken in the course thereof, the company shall be regarded as having continued in existence and the person who was last registered as the agent of the company pursuant to section sixty-two of this Act or as the public officer of the company pursuant to the Companies Acts, shall be regarded as the agent or public officer of the company.

This subsection shall extend to a case in which the company was dissolved before the commencement of this Act as well as to a case in which the company is dissolved after such commencement.

(3) Where (in the case of a company incorporated outside this State and carrying on business therein), on any petition presented by the Attorney-General pursuant to subsection two of section two hundred and ten, an order is made for the affairs of the company, so far as assets in this State are concerned, to be wound up, such company shall not carry on business or establish or keep a place of business within this State.

Prohibition
against
company
carrying on
business in
certain cases.
1899, No. 40,
s. 257A.
1934, No. 8,
s. 3 (b).

Every company which fails to comply with the provisions of this subsection and every officer or agent of the company knowingly concerned in the contravention of this subsection, shall be liable to a penalty not exceeding five hundred pounds, and in the case of a continuing offence, to a penalty not exceeding one hundred pounds for every day during which the default continues.

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Notice of discontinuance of business.
19 and 20 Geo. V, c. 23, s. 350 (2).

Where company goes into liquidation.
cf. Vict. No. 3659, s. 270 (12); No. 4005, s. 7 (2).

Company becoming dissolved in country of incorporation.

Penalties.
19 and 20 Geo. V, c. 23, s. 351.

Interpretation.
Ibid. s. 352.

72. (1) If any company to which this Part applies ceases to carry on business in the State it shall forthwith file notice of the fact with the Registrar-General, and as from the date on which notice is so given the obligation of the company to file any document with the Registrar-General shall cease.

(2) (a) If any company to which this Part applies goes into liquidation in the country in which it is incorporated, the agent of such company shall forthwith file with the Registrar-General notice of the liquidation and of the appointment of the liquidator.

(b) Any creditor or contributory of such a company going into liquidation as aforesaid may apply to the court for an order for the affairs of the company so far as the assets in this State are concerned to be wound up in this State, and on such order being made the provisions of this Act relating to the winding up of a company incorporated in this State shall, with such adaptations as are necessary, extend and apply accordingly.

(3) If any company to which this Part applies is dissolved in the country in which it was incorporated the agent of the company shall forthwith file notice thereof with the Registrar-General, who may thereupon remove the name of the company from the register.

73. If any company to which this Part applies fails to comply with any of the foregoing provisions of this Part of this Act the company, and every officer or agent of the company who is in default shall be guilty of an offence.

Penalty: Fifty pounds, or, in the case of a continuing offence, five pounds for every day during which the default continues.

74. For the purposes of this Part of this Act—

“Carries on business” includes establishing or using a share transfer or share registration office; and “to carry on business” has a corresponding meaning.

A company shall not be deemed to carry on business in the State by reason only of its investing its funds or other property in the State.

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

“Company” includes a society.

“Director” in relation to a company includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

“Prospectus” has the same meaning as when used in relation to a company incorporated under this Act.

PART VII.

MANAGEMENT AND ADMINISTRATION OF COMPANIES.

DIVISION 1.—*Registered office and name.*

75. (1) (a) A company shall, as from the day on which it begins to carry on business or as from the twenty-eighth day after the date of its incorporation, whichever is the earlier, establish and register an office to which all communications and notices may be addressed.

(b) A company shall before or immediately upon a change in the situation of its registered office register such change.

(2) Registration of such office and of a change in the situation thereof shall be effected by filing with the Registrar-General appropriate notice in the prescribed form.

(3) 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 section.

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

Penalty: Five pounds.

Publication
of name by
company.
19 and 20
Geo. V, c.
23, s. 93.
1899, No. 40,
ss. 67, 68.

76. (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 in legible characters on its seal; and
- (c) shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts, and letters of credit of the company.

(2) If a company does not paint or affix its name in manner directed by this section, the company and every officer of the company who is in default shall be guilty of an offence.

Penalty: Five pounds.

(3) 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 guilty of an offence.

Penalty: Five pounds.

(4) Any company which fails to comply with paragraph (b) or paragraph (c) of subsection one of this section shall be guilty of an offence.

Penalty: Fifty pounds.

(5) Any director, manager, or officer of a company, or any person on its behalf who—

- (a) uses or authorises the use of any seal purporting to be a seal of the company whereon its name does not appear as aforesaid;
- (b)

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- (b) issues or authorises the issue of any notice, advertisement, or other official publication of the company, or signs or authorises to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque, or order for money or goods, wherein its name is not mentioned in the manner aforesaid; or
- (c) issues or authorises the issue of any bill of parcels, invoice, receipt, or letter of credit of the company, wherein its name is not mentioned in the manner aforesaid;

shall be guilty of an offence, 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.

Penalty: Fifty pounds.

(6) The use of the contraction " Ltd." in lieu of the word " Limited " in the name of the company shall not be regarded as an offence against any provision of this section.

77. (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;
- (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 filed with the Registrar-General a statutory declaration by the secretary or one of the directors, in the prescribed form, that the conditions mentioned in paragraphs (a) and (b) of this subsection have been complied with.

19 and 20
Geo. V, c.
23, s. 94.

(2)

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(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 filed with the Registrar-General a statement in lieu of prospectus pursuant to section one hundred and forty-three of this Act;
- (b) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash; and
- (c) there has been filed with the Registrar-General a statutory declaration by the secretary or one of the directors in the prescribed form that paragraphs (a) and (b) of this subsection have been complied with.

(3) The Registrar-General shall, on the filing of the statutory declaration, certify that the requirements of subsection one or of subsection two of this section, as the case may be, have been complied with, and that certificate shall be conclusive evidence of that fact in favour of any person dealing with the company.

(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 guilty of an offence.

Penalty: Fifty pounds for every day during which the contravention continues.

(7) Nothing in this section shall apply to—

- (a) a proprietary company; or
- (b) an existing company.

DIVISION 2.—Register of members.

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

- (a) the names and addresses, and the occupations (where known) 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; and
- (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 filed notice of the conversion with the Registrar-General the register shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares specified in paragraph (a) of this subsection.

(2) A specimen copy of every type of share certificate issued by the company after the commencement of this Act shall be affixed in the register before any certificate of that type is issued or delivered out by the company.

The register of members may be kept according to a loose-leaf system in the manner and subject to the conditions prescribed.

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

79. (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,

Index of
members of
company.

19 and 20

Geo. V,

c. 23, s. 96.

No. 33, 1936.

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

Provisions
as to entries
in register
in relation
to share
warrants.
19 & 20 Geo.
V, c. 23, s.
97.
1899, No.
40, ss. 57-61.

80. (1) Notwithstanding any provision in its articles a company shall not after the commencement of this Act issue any share warrant.

(2) The bearer of a share warrant issued before the commencement of this Act shall be entitled, on surrendering it for cancellation, to have his name entered 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 issued before the commencement of this Act in respect of the shares therein specified without the warrant being surrendered and cancelled.

(4) Subject to the provisions of this Act, the bearer of a share warrant issued before the commencement of this Act 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.
19 and 20
Geo. V, c.
23, s. 98.
1899, No. 40,
s. 239.

81. (1) The register of members, commencing from the date of the registration of the company, and the index of the names of members, shall be kept at the registered office of the company, and, 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 imposes, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member without charge and of any other person on payment of one shilling, or such less sum as the company prescribes, for each inspection.

(2)

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

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

(4) 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 guilty of an offence.

Penalty: In respect of each offence two pounds, and in addition two pounds for each day during which the default or refusal continues.

(5) 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.

82. A company may, on giving at least fourteen days' notice by advertisement in a daily newspaper published in Sydney, and in the case of any company whose registered office is more than fifty miles from Sydney in addition in a newspaper published in the district in which such registered office is situated, close the register of members for any time or times not exceeding in the whole thirty days in each year.

Power to close register.
19 and 20 Geo. V, c. 23, s. 99.
1899, No. 49, s. 240.

83. (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,

Power of court to rectify register.
19 and 20 Geo. V, c. 23, s. 100.
1899, No. 40, s. 232.

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)

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(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 file a copy of a return containing a list of its members with the Registrar-General, the court, when making an order for rectification of the register, shall by its order direct a notice of the rectification to be filed with the Registrar-General.

Trusts not to be entered on register.
19 and 20 Geo. V, c. 28, s. 101.
cf. 1899, No. 40, s. 237.

Register to be evidence.
19 and 20 Geo. V, c. 23, s. 102.
cf. 1899, No. 40, s. 226.

84. No notice of any trust, expressed, implied, or constructive, shall be entered on the register, or be receivable by the Registrar-General.

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

Power for company to keep branch register.
19 and 20 Geo. V, c. 23, s. 103.
cf. 1899, No. 40, ss. 25, 26.

DIVISION 3.—*Branch register.*

86. (1) A company having a share capital whose objects comprise the transaction of business in any part of His Majesty's dominions outside the State, may, if authorised by its articles, cause to be kept in any such part of His Majesty's dominions in which it transacts business a branch register of members (in this Act called a "branch register").

(2) The company shall file with the Registrar-General a 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 filed within fourteen days after the opening of the office or of the change or discontinuance, as the case may be.

(3)

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

(4) References to a branch register or to an extra-colonial register occurring in any articles registered before the commencement of this Act shall be construed as references to a branch register.

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

(2) It shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement before closing the register shall be inserted in some newspaper published and circulating in the district where the branch register is kept.

(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 its registered office, duly entered up from time to time, a duplicate of its branch register, which 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 a branch register, and thereupon all entries in that register shall be transferred to some other branch register kept by the company in the same part of His Majesty's dominions, or to the principal register.

(6) Subject to the provisions of this Act, any company may, by its articles, make such provisions as it may think fit respecting the keeping of branch registers and the transfer of shares from the principal register to a branch register or vice versa, or from a branch register to another branch register.

Regulations
as to
branch
register.
19 and 20
Geo. V, c. 23,
s. 104.
cf. 1899, No.
40, ss. 27-32.

Share certifi-
cate to
notify regis-
ter upon
which shares
are trans-
ferable.
Q. 22 Geo. V
No. 58
s. 117 (6).

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

DIVISION 4.—*Annual return.*

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

19 and 20
Geo. V, c. 23,
s. 208.
1899, No. 40,
ss. 20, 21, 62.

88. (1) Every company having a share capital shall once at least in every calendar year make a return containing a list—

- (a) of all persons who, on the date of or on the fourteenth day after the first or only ordinary general meeting in the year, are members of the company; and
- (b) 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 lists shall state the names, addresses, and occupations (where known) of all the past and present members therein mentioned, and the number of shares (specifying their class) held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return or, in the case of the first return, of the incorporation of the company by persons who are still members or have ceased to be members respectively and the dates of registration of the transfers.

If the names in a list are not arranged in alphabetical order, that list shall 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 filed a notice of the conversion with the Registrar-General, 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 required by this subsection.

(3) The return shall also state the address of the registered office of the company, and shall contain a summary distinguishing between shares issued for
cash

cash and shares issued as fully or partly paid up otherwise than in cash, and specifying the following particulars:—

- (a) the amount of the share capital of the company, and the number of the shares into which it is divided;
- (b) the number of shares taken from the commencement of the company up to the date of the return;
- (c) the amount called up on each share;
- (d) the total amount of calls received;
- (e) the total amount of calls unpaid;
- (f) the total amount of the sums, if any, paid by way of commission in respect of any shares or debentures;
- (g) particulars of the discount on the issue of any shares issued at a discount, or of so much of that discount as has not been written off at the date of the return;
- (h) the total amount of the sums, if any, allowed by way of discount in respect of any debentures, since the date of the last return;
- (i) the total number of shares forfeited since the date of the last return;
- (j) the total amount of shares for which share warrants issued before the commencement of this Act are outstanding at the date of the return;
- (k) the total amount of share warrants surrendered since the date of the last return or incorporation, as the case may be;
- (l) all such 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 in the register of the directors of a company;
- (m) the total amount of the indebtedness of the company at the date of the return in respect of all mortgages, charges and liens whether they are or are not such as are required to be registered under this Act with the Registrar-General, or under any Act repealed by this Act with the Registrar of Joint Stock Companies.

(4)

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Six.**

(4) The return shall be in accordance with the form set out in Schedule Six to this Act or as near thereto as circumstances admit.

(5) 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.

(6) In this section "date of the return" and "date of the last return" means the date as on which the return or the last return as the case may be is made up.

**Annual
return to be
made by
company not
having
share
capital.**
19 and 20
Geo. V, c.
23, s. 109.

89. (1) Every company not having a share capital shall once at least in every calendar year make a return in or to the effect of the prescribed form stating—

- (a) the address of the registered office of the company;
- (b) all such particulars with respect to the persons who at the date as on which the return is made are the directors of the company as are by this Act required to be contained with respect to directors in the register of directors of a company.

(2) There shall be annexed to the return a statement containing particulars of the total amount of the indebtedness of the company in respect of all mortgages, charges, and liens whether they are or are not such as are required to be registered under this Act with the Registrar-General or under any Act repealed by this Act with the Registrar of Joint Stock Companies.

**General
provisions
as to annual
returns.**
Ibid. s. 110.

90. (1) The annual return shall be inserted in a separate part of the register of members, and shall be completed within sixty days after the first or only general meeting in the year, and the company shall forthwith file with the Registrar-General a copy signed by a director or by the manager or by the secretary of the company.

(2) Section eighty-one of this Act shall apply to the annual return as it applies to the register of members.

(3)

(3) Except where the company is a proprietary company, the annual return shall include a written copy, certified by a director or the manager or secretary of the company to be a true copy, of the last balance-sheet which has been audited by the company's auditors, including every document required by law to be annexed or attached thereto, together with a copy of the report thereon of the auditors, pursuant to section one hundred and fifteen, certified by a director or the manager or secretary of the company to be a true copy, 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 last balance-sheet did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance-sheets, there shall be made such additions to and corrections in the copy as would have been required to be made in the balance-sheet in order to make it comply with the requirements of the law, and the fact that the copy has been so amended shall be stated thereon.

(4) If a company fails to comply with this section or with either section eighty-eight or eighty-nine of this Act the company and every officer of the company who is in default shall be guilty of an offence.

(5) For the purposes of subsection four of this section, "officer," and for the purposes of section eighty-eight or section eighty-nine of this Act, "director," shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

(6) Where a company is incorporated under this Act after the thirtieth day of September in any year and has not held an ordinary general meeting in that year the failure to comply with section eighty-eight, or eighty-nine or this section in respect of that year shall not be regarded as an offence.

91. A proprietary company shall file with the copy of the annual return required by section eighty-eight of this Act a certificate signed by a director or the secretary of the company that the company has not, since the date of the last return, or, in the case of a first return, since the date of the incorporation of the company, or since the

Certificates
to be sent by
proprietary
company
with annual
return.
19 and 20
Geo. V, e.
23, s. 111.

No. 33, 1936. the date of its conversion into a proprietary company, issued any invitation to the public to subscribe for any shares or debentures of the company or to deposit money with the company and where the annual return discloses the fact that the number of members of the company exceeds fifty (or one hundred in the case of an existing company converted into a proprietary company and entitled to have that number of members) also a certificate so signed that the excess consists wholly of persons who under subparagraph (ii) of paragraph (a) of subsection one of section thirty-seven of this Act, are not to be included in reckoning the number of fifty (or one hundred as the case may be).

Division 5.—Meetings and proceedings.

Annual general meeting.
19 and 20 Geo. V, c. 23, s. 112.

cf. 1899, No. 40, s. 246.

92. (1) An ordinary general meeting of every company shall be held once at the least in every calendar year, and not more than fifteen months after the holding of the last preceding general meeting.

(2) If default is made in holding a meeting of the company in accordance with the provisions of this section, the company, and every director or manager of the company who is knowingly a party to the default shall be guilty of an offence.

Penalty: Fifty pounds.

(3) If any such default is made, the court may, on the application of any member of the company, call, or direct the calling of, a general meeting of the company.

(4) Where a company is incorporated under this Act after the thirtieth day of September in any year the failure to hold an ordinary general meeting in that year shall not be regarded as an offence under this section.

Statutory meeting and statutory report.
19 and 20 Geo. V, c. 23, s. 113.
cf. 1899, No. 40, s. 242.

93. (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)

(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 manager, 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 prescribed in paragraph (a) of this subsection;
- (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 those 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)

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(5) The directors shall cause a copy of the statutory report, certified as required by this section, to be filed with the Registrar-General for registration forthwith after it is forwarded to the members of the company.

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

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

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

(9) In the event of any default in complying with the provisions of this section every director of the company who is guilty of or who knowingly and wilfully authorises or permits the default shall be guilty of an offence.

Penalty: Fifty pounds.

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

Convening
of extra-
ordinary
general
meeting on
requisition.
19 and 20
Geo. V, c.
23, s. 114.

94. (1) The directors of a company, notwithstanding anything in its articles shall, on the requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as at the date of the deposit carries the right of voting at general meetings of the company, or, in the case of a company not having a share capital, members of the company representing not less than one-tenth of the total voting rights of all the members

members having at the date of the deposit 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 the date of the deposit.

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

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

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

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

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

Provisions
as to
meetings
and votes.

19 and 20
Geo. V, c.

23, s. 115.

1899, No.

40, s. 248.

No. 33, 1936.

served by Table A, and for the purpose of this paragraph Table A means that Table as for the time being in force;

- (c) two or more members holding not less than one-tenth of the issued share capital or, if the company has not a share capital, not less than five per centum in number of the members of the company may call a meeting;
- (d) in the case of a proprietary company two members, and in the case of any other company three members, personally present shall be a quorum;
- (e) any member elected by the members present at a meeting may be chairman thereof; and
- (f) in the case of a company originally having a share capital, every member shall have one vote in respect of each share or each ten pounds of stock held by him, 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 manner prescribed by the articles or this Act, the court may, either of its own motion or on the application of any director of the company or of any member of 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.

Representation of companies at meetings of other companies and of creditors.
19 and 20 Geo. V, c. 23, s. 116.

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

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

(b)

(b) if it is a creditor (including a holder of debentures) of another corporation being a company within the meaning of this Act, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or of any general rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

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

97. (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.

Provisions
as to extra-
ordinary
and special
resolutions.
19 and 20
Geo. V, c.
23, s. 117.
cf. 1899,
No. 40, s.
247.

(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 all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given.

(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.

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(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 the articles.

Registration and copies of certain resolutions and agreements.
19 and 20
Geo. V, c.
23, s. 118.
1890, No.
40, ss. 249,
250.

98. (1) A printed copy of every resolution or agreement to which this section applies shall, within fifteen days after the passing or making thereof or the date when it becomes effective be filed with the Registrar-General and recorded by him.

(2) Where articles have been registered, a copy of every such resolution or agreement for the time being in force which affects the articles 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 one shilling or such less sum as the company directs.

(4) This section shall apply to—

- (a) special resolutions;
- (b) extraordinary resolutions;
- (c)

- (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; and
- (e) resolutions requiring a company to be wound up voluntarily, passed under paragraph (a) of subsection one of section two hundred and sixty of this Act.

(5) If a company fails to comply with subsection one of this section, the company and every officer of the company who is in default shall be guilty of an offence.

Penalty: Two pounds for every day during which the default continues.

(6) If a company fails to comply with subsection two or subsection three of this section, the company and every officer of the company who is in default shall be guilty of an offence.

Penalty: One pound for each copy in respect of which default is made.

(7) For the purposes of subsections five and six of this section a liquidator of the company shall be deemed to be an officer of the company.

99. Where after the commencement of this Act a resolution is passed at an adjourned meeting of—

- (a) a company;
- (b) the holders of any class of shares in a company; or
- (c) the directors of a company;

19 and 20
Geo. V, c
23, s. 119.

the

No. 33, 1936. the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

Minutes of
proceedings.
19 and 20
Geo. V, c.
23, s. 120.
1899, No.
40, s. 260.

100. (1) Every company shall cause minutes of all proceedings of general meetings, and where there are directors, of all proceedings at meetings of its directors, to be entered in books kept for that purpose, and shall cause every such minute to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting.

(2) Any such minute, if purporting to be so signed, 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 made thereat shall be deemed to be valid.

Inspection
of minute
books.
19 and 20
Geo. V, c.
23, s. 121.

101. (1) The books containing the minutes of proceedings of any general meeting of a company held after the commencement of this Act shall be kept at the registered office of the company, and shall during business hours (subject to such reasonable restrictions as the company by its articles or in general meeting imposes, so that no 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 ten days after he has made a request in writing in that behalf to the company with a copy of any such minutes at a charge not exceeding sixpence for every hundred words.

(3) If any inspection required under this section is refused, or if any copy required under this section is not sent within the proper time, the company and every officer of the company who is in default shall be guilty of an offence.

Penalty:

Penalty: In respect of each offence, two pounds, and, in addition, two pounds for every day during which the refusal or default continues.

(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.

DIVISION 6.—*Accounts and audit.*

102. (1) Every company shall cause to be kept proper accounts with respect to—

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

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

(c) the assets and liabilities of the company.

(2) The accounts 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 any director.

(3) Any person who, 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, shall be guilty of an offence.

Penalty: In respect of each offence, two hundred pounds or imprisonment for six months.

(4) 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.

(5) The court may in a particular case order that such accounts shall be open to inspection by an accountant acting for a director but only upon an undertaking in writing being given to the court that information acquired by such accountant shall not be disclosed by him save to such director.

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Profit and
loss account
and balance-
sheet.19 and 20
Geo. V, c.
23, s. 123.

103. (1) The directors of every company shall, at some date not later than eighteen months after the incorporation of the company, and subsequently once at least in every calendar year lay before the company in general meeting a profit and loss account or, in the case of a company not trading for profit, an income and expenditure account for the period, in the case of the first account, since the incorporation of the company, and, in any other case, since the preceding account, made up to a date not earlier than the date of the meeting by more than nine months, or, in the case of a company carrying on business or having interests abroad, by more than twelve months:

Provided that the Registrar-General, if for any special reason he thinks fit so to do, may, in the case of any company, extend the period of eighteen months, and in the case of any company and with respect to any year extend the periods of nine and twelve months.

(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, including information as to what amount has been written off for depreciation, 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, and if reserves have been drawn upon during the period covered by the account, the purpose for which the drawing was made and the amount thereof.

(3) Any person who, being a director of a company, fails to take all reasonable steps to comply with the provisions of this section, shall be guilty of an offence.

Penalty: Two hundred pounds or imprisonment for six months.

(4)

(4) 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.

104. (1) Every balance-sheet of a company shall contain a summary of the authorised share capital and of the issued share capital of the company, its liabilities and its assets, together with such particulars as are necessary to disclose the general nature of the liabilities and the assets of the company and to distinguish between the amounts respectively of the fixed assets and of the floating assets, and shall state how the values of each such class of assets have been arrived at.

Contents of
balance-
sheet.
19 and 20
Geo. V, c.
23, s. 124.

(2) There shall be stated under separate headings in the balance-sheet, so far as they are not written off—

- (a) the preliminary expenses of the company;
- (b) any expenses incurred in connection with any issue of share capital or debentures; and
- (c) if it is shown as a separate item in or is otherwise ascertainable from the books of the company, or from any contract for the sale or purchase of any property to be acquired by the company, or from any document in the possession of the company relating to the stamp duty payable in respect of any such contract or any conveyance of any such property, the amount of the goodwill and of any patents and trademarks as so shown or ascertained.

(3) Where any liability of the company is secured otherwise than by operation of law on any assets of the company, the balance-sheet shall include a statement that that liability is so secured, but it shall not be necessary to specify in the balance-sheet the assets on which the liability is secured.

(4) The provisions of this section are in addition to other provisions of this Act requiring other matters to be stated in balance-sheets.

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Assets
consisting of
shares in
subsidiary
companies to
be set out
separately
in balance-
sheet.

19 and 20
Geo. V, c.
23, s. 125.

Balance-
sheet to
include
particulars
as to
subsidiary
companies.
Ibid. s. 126.

105. Where any of the assets of a company consist of shares in, or amounts owing (whether on account of a loan or otherwise) from a subsidiary company or subsidiary companies, the aggregate amount of those assets, distinguishing shares and indebtedness, shall be set out in the balance-sheet of the first-mentioned company separately from all its other assets, and where a company is indebted, whether on account of a loan or otherwise, to a subsidiary company or subsidiary companies, the aggregate amount of that indebtedness shall be set out in the balance-sheet of that company separately from all its other liabilities.

106. (1) Where a company (in this section referred to as "the holding company") holds shares either directly or through a nominee in a subsidiary company or in two or more subsidiary companies, there shall be annexed to the balance-sheet of the holding company a statement, signed by the persons by whom in pursuance of section one hundred and ten of this Act the balance-sheet is signed, stating how the profits and losses of the subsidiary company, or, where there are two or more subsidiary companies, the aggregate profits and losses of those companies, have, so far as they concern the holding company, been dealt with in, or for the purposes of, the accounts of the holding company, and in particular how, and to what extent—

(a) provision has been made for the losses of a subsidiary company either in the accounts of that company or of the holding company, or of both; and

(b) losses of a subsidiary company have been taken into account by the directors of the holding company in arriving at the profits and losses of the holding company as disclosed in its accounts:

Provided that it shall not be necessary to specify in any such statement the actual amount of the profits or losses of any subsidiary company, or the actual amount of any part of any such profits or losses which has been dealt with in any particular manner.

(2) If, in the case of a subsidiary company, the auditors' report on the balance-sheet of the company does not state without qualification that the auditors have

have obtained all the information and explanations they have required, and that the balance-sheet is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them and as shown by the books of the company, the statement which is to be annexed, as prescribed by subsection one of this section to the balance-sheet of the holding company shall contain particulars of the manner in which the report is qualified.

(3) For the purposes of this section, the profits or losses of a subsidiary company mean the profits or losses shown in any accounts of the subsidiary company made up to a date within the period to which the accounts of the holding company relate, or, if there are no such accounts of the subsidiary company available at the time when the accounts of the holding company are made up, the profits or losses shown in the last previous accounts of the subsidiary company which became available within that period.

(4) If for any reason the directors of the holding company are unable to obtain such information as is necessary for the preparation of the statement referred to in subsection one of this section, the directors who sign the balance-sheet shall so report in writing and their report shall be annexed to the balance-sheet in lieu of the statement.

107. (1) Where the assets of a company consist in whole or in part of shares in another company, whether held directly or through a nominee and whether that other company is a company within the meaning of this Act or not, and—

Meaning of
subsidiary
company.
19 and 20
Geo. V, c.
23, s. 127.

- (a) the amount of the shares so held is at the time when the accounts of the holding company are made up more than fifty per centum of the issued capital of that other company or such as to entitle the company to more than fifty per centum of the voting power in that other company; or
- (b) the company has power (not being power vested in it by virtue only of the provisions of a debenture trust deed or by virtue of shares issued to

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to it for the purpose in pursuance of those provisions) directly or indirectly to appoint or nominate the majority of the directors of that other company,

that other company shall be deemed to be a subsidiary company for the purposes of this Act.

(2) Where a company the ordinary business of which includes the lending of money holds shares in another company as security only, no account shall for the purpose of determining under this section whether that other company is a subsidiary company be taken of the shares so held.

Accounts to contain particulars as to loans to, and remuneration of, directors, etc.

19 and 20
Geo. V, c.
23, s. 128.

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

- (a) the amount of any loans which during the period to which the accounts relate have been made either by the company or by any other person under a guarantee from or on a security provided by the company to any director or officer of the company, including any such loans which were repaid during that period;
- (b) the amount of any loans made in the manner mentioned in paragraph (a) of this subsection to any director or officer at any time before the period referred to in that paragraph and outstanding at the expiration thereof; and
- (c) the total of the amount paid to the directors as remuneration for their services, inclusive of all emoluments paid to or receivable by them by or from the company or by or from any subsidiary company.

(2) The provisions of subsection one of this section with respect to loans shall not apply—

- (a) in the case of a company the ordinary business of which includes the lending of money, to a loan made by the company in the ordinary course of its business; or

(b)

(b) to a loan made by the company to any employee of the company if the loan does not exceed one thousand pounds and is certified by the directors of the company to have been made in accordance with any practice adopted or about to be adopted by the company with respect to loans to its employees.

(3) The provisions of subsection one of this section with respect to the remuneration paid to directors shall not apply in relation to a managing director of the company, and in the case of any other director who holds any salaried employment or office in the company there shall not be required to be included in the total amount referred to in paragraph (c) of that subsection any sums paid to him except sums paid by way of directors' fees.

(4) If in the case of any such accounts the requirements of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report on the balance-sheet of the company, so far as they are reasonably able to do so, a statement giving the required particulars.

(5) In this section the expression "emoluments" includes fees, percentages and other payments made or consideration given directly or indirectly to a director as such, and the money value of any allowances or perquisites belonging to his office.

109. (1) A balance-sheet, summary, advertisement, statement of assets and liabilities or other document whatsoever published, issued, or circulated by or on behalf of a company shall not contain any direct or indirect representation that the company has any reserve fund, unless—

- (a) that reserve fund is actually existing; and
- (b) the representation is accompanied by a statement, showing what proportion (if any) of the reserve fund is used in the business.

(2) Any director or manager who alone or in conjunction with any other person, knowingly or wilfully, signs, publishes, issues, or circulates, or causes to be signed, published, issued, or circulated, any balance-sheet, summary, advertisement, statement of assets and liabilities

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Penalty: Imprisonment for two years.

(3) Any director or manager who through culpable negligence, alone or in conjunction with any other person, signs, publishes, issues, or circulates, or causes to be signed, published, issued, or circulated, any balance-sheet, summary, advertisement, statement of assets and liabilities, or other document which contravenes subsection one of this section, shall be guilty of an offence.

Penalty: One hundred pounds.

*Signing of
balance-
sheet.*

*19 and 20
Geo. V, c.
23, s. 129.*

110. (1) Every balance-sheet of a company shall be signed on behalf of the board by at least two of the directors of the company, or, if there is only one director resident in the State, then by that director, and the auditors' report, made pursuant to section one hundred and fifteen, shall be attached to the balance-sheet or there shall be inserted at the foot of the balance-sheet a reference to the report, and the report shall be laid before the company in general meeting, and shall then but not before be open to inspection by any member.

It shall be the duty of the directors to make available to the members present at the meeting a reasonable number of copies of the report, and to cause such report to be read at the meeting.

If a majority in number of those present in person at the meeting thereupon resolve that any report not already circulated is to be circulated among all the members the meeting shall be adjourned for a fortnight, and in the meantime the directors shall circulate the report among all the members.

(2) In the case of a banking company, the balance-sheet must be signed by the secretary or manager, if any, and where there are more than three directors of the company, by at least three of those directors, and where there are not more than three directors by all the directors.

(3) If any copy of a balance-sheet which has not been signed as required by this section is issued, circulated, or published, or if any copy of a balance-sheet is issued, circulated, or published without either having a copy

copy of the auditors' report made pursuant to section one hundred and fifteen attached thereto or containing such reference to that report as is required by this section or if default is made in complying with any provision of this section the company, and every director, manager, secretary, or other officer of the company who is knowingly a party to the default, shall be guilty of an offence.

Penalty: Fifty pounds.

111. (1) In the case of a company not being a proprietary company—

(a) a copy of every balance-sheet, including every document required by law to be annexed or attached thereto, which is to be laid before the company in general meeting, shall, not less than seven days before the date of the meeting, be sent to all persons entitled to receive notices of general meetings of the company; and

(b) any member of the company whether he is or is not entitled to have sent to him copies of the company's balance-sheets, and any holder of debentures of the company, 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 or attached thereto.

(2) If default is made in complying with paragraph (a) of subsection one of this section, the company and every officer of the company who is in default shall be guilty of an offence.

Penalty: Twenty pounds.

(3) If, where any person makes a demand for a document with which he is by virtue of paragraph (b) of subsection one of this section entitled to be furnished, default is made in complying with the demand within seven days after the making thereof, the company and every director, manager, secretary, or other officer of the company who is knowingly a party to the default shall, unless it is proved that that person has already made a demand for and been furnished with a copy of the document, be guilty of an offence.

Penalty: Five pounds for every day during which the default continues. (4)

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

19 and 20 Geo. V, c.

23, s. 130.

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(4) In the case of a company being a proprietary company, any member of the company and any holder of debentures of the company 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 the balance-sheet, including every document required by law to be annexed or attached thereto, at a charge not exceeding sixpence for every hundred words.

(5) If default is made in furnishing such a copy to any member of or holder of debentures of the company 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 guilty of an offence.

Banking and certain other companies to publish periodical statement.
19 and 20 Geo. V, c. 28, s. 181.
1899, No. 40, s. 69.
Schedule Seven.

112. (1) Every company, being a limited banking company or an insurance company, shall, before it commences business, and also on the first Monday in February and the first Tuesday in August in every year during which it carries on business, make a statement in the form set out in Schedule Seven to this Act or as near thereto as circumstances admit.

(2) A copy of the statement shall be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on.

(3) Every member and every creditor of the company shall be entitled to a copy of the statement, on payment of a sum not exceeding sixpence.

(4) If default is made in complying with this section, the company and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be guilty of an offence.

Penalty: Five pounds for every day during which the default continues.

(5) For the purposes of this Act a company which carries on the business of insurance in common with any other business or businesses shall be deemed to be an insurance company.

Appointment and remuneration of auditors.
cf. 19 & 20 Geo. V, c. 23, s. 182.

113. (1) (a) Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.

(b)

(b) If an auditor is not appointed at an annual general meeting the directors shall forthwith call an extraordinary general meeting for the purpose of appointing an auditor.

(2) If such appointment is not made at an annual general meeting or at an extraordinary general meeting held within three months thereafter, or if the directors fail, for the space of three months, to fill any casual vacancy in the office of auditor, the Registrar-General may, on the application of any member of the company, appoint an auditor of the company to hold office until the next annual general meeting.

(3) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a member to the company not less than fourteen days before the annual general meeting, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to the members, either by advertisement or in any other mode allowed by the articles, not less than seven days before the annual general meeting:

Provided that if, after notice of the intention to nominate an auditor has been so given, an annual general meeting is called for a date fourteen 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, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this subsection, be sent or given at the same time as the notice of the annual general meeting.

(4) Subject to the provisions of this subsection, the first auditors of the company may be appointed by the directors at any time before the first annual general meeting, and auditors so appointed shall hold office until 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

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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 the said powers of the directors shall cease.

(5) 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.

(6) The remuneration of the auditors shall be fixed by or under the authority of the company in general meeting, 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 Registrar-General may be fixed by him.

Disqualification for appointment as auditor.

19 and 20
Geo. V, c.
23, s. 133.

114. (1) None of the following persons shall be qualified for appointment or to act as auditor of a company:—

- (a) a director or officer of the company;
- (b) except where the company is a proprietary company, a person who is a partner of or in the employment of or the employer of a director or officer of the company;
- (c) a body corporate; and
- (d) a person who is or becomes indebted in an amount exceeding two hundred and fifty pounds to the company (not being a bank or life assurance company).

(2) Nothing in this section shall disqualify a body corporate from acting as auditor of a company if acting under an appointment made before the commencement of this Act.

(3)

(3) Appointment as the public officer of a company for the purposes of any law relating to taxation shall not be a disqualification for appointment as the auditor of a company.

(4) Any person disqualified by this section who acts as auditor of a company shall be guilty of an offence.

Penalty: One hundred pounds.

115. (1) The auditors shall make a report to the members on the accounts examined by them and on the register of members and other records which the company is required to keep by law or by its articles, and on every balance-sheet laid before the company in general meeting during their tenure of office, and the report shall state—

- (a) whether or not they have obtained all the information and explanations they have required;
- (b) whether, in their opinion, the balance-sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company: and
- (c) whether, in their opinion, the register of members and other records which the company is required to keep by law or by its articles have been properly kept.

(2) 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 directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors.

In the case of a company which has branches outside the State, it shall be sufficient if the auditor is allowed access to such copies and extracts from the books and accounts of any branch and such returns as have been transmitted to the office of the company within the State.

(3) The auditors of a company shall be entitled to attend any general meeting of the company at which any accounts which have been examined or reported on by them are to be laid before the company and to make any explanation desired by a member with respect to the accounts.

DIVISION

Auditors' report and auditors' right of access to books and right to attend general meetings.

19 and 20 Geo. V, c. 23, s. 134.

DIVISION 7.—*Inspection.*

Investigation of affairs of company by inspectors.

19 and 20
Geo. V, c.
23, s. 135.
1899, No.
40, ss. 252-
255.

116. (1) The Governor may appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as the Governor directs—

- (a) in the case of a banking company having a share capital, on the application of members holding not less than one-third of the shares issued;
- (b) in the case of any other company having a share capital, on the application of members holding not less than one-tenth of the shares issued; and
- (c) 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 Governor requires for the purpose of showing that the applicants have good reason for, and are not actuated by malicious motives in, requiring the investigation, and the Governor may, before appointing an inspector, require the applicants to give security for payment of the costs of the inquiry.

(3) It shall be the duty of all officers and agents of the company to produce to the inspectors all books and documents in their custody or power.

(4) An inspector may, by summons in the prescribed form, require any officer or agent of the company to appear before him for examination in relation to its business, and may administer an oath accordingly. Such summons may require the production of all books and documents in the custody or under the control of such officer or agent.

(5) If any officer or agent of the company fails to appear in obedience to the summons or 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, the inspectors may certify the refusal under their

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.

(6) On the conclusion of the investigation the inspectors shall report their opinion to the Governor in writing, and a copy of the report shall be forwarded by the Governor to the registered office of the company, and a further copy shall, at the request of the applicants for the investigation, be delivered to them.

117. (1) If from any report made under section one hundred and sixteen it appears to the Minister that—

- (a) any person has been guilty of any offence in relation to the company for which he is criminally liable;
- (b) that the case is one in which a prosecution ought to be instituted; and
- (c) it is desirable in the public interest that the proceedings in the prosecution should be conducted by him,

he shall order proceedings to be instituted accordingly, and it shall be the duty of all officers and agents of the company, past and present (other than the defendant in the proceedings) to give all assistance in connection with the prosecution which they are reasonably able to give.

(2) The expenses of and incidental to an investigation under section one hundred and sixteen of this Act shall be defrayed by the members on whose application the inspector was appointed, but where the Governor thinks proper to direct that they shall either be paid by the company or in part by the company and in part by the applicants, they shall be paid accordingly, and such expenses or part so directed to be paid by the company shall become a debt from the company to the applicants, any may be recovered by them from the company in any court of competent jurisdiction.

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Power of
company to
appoint
inspectors.
19 and 20
Geo. V, c.
23, s. 137.
1899, No.
40, s. 256.

118. (1) A company may by special resolution appoint inspectors to investigate its affairs.

(2) Inspectors so appointed shall have the same powers and duties as inspectors appointed by the Governor, except that, instead of reporting to the Governor, they shall report in such manner and to such persons as the company in general meeting directs.

(3) If any officer or agent of the company 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, he shall be liable to be proceeded against in the same manner as if the inspectors had been inspectors appointed by the Governor.

(4) For the purposes of this section and sections one hundred and sixteen and one hundred and seventeen of this Act the expression "agents" in relation to a company shall be deemed to include the bankers and solicitors of the company and any persons employed by the company as auditors whether those persons are or are not officers of the company.

Report of
inspectors to
be evidence.
19 & 20
Geo. V, c.
23, s. 138.
1899, No.
40, s. 257.

119. A copy of the report of any inspectors appointed under 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.

DIVISION 8.—*Directors.*

Number of
directors.
19 and 20
Geo. V, c.
23, s. 139.

120. (1) Every company registered after the commencement of this Act shall have at least three directors, except a proprietary company, which shall have at least two directors.

(2) Where a casual vacancy occurs whereby the number of directors is reduced below the number provided for in subsection one, this section shall be complied with if the casual vacancy is filled within one month after it occurs.

(3) Failure to comply with this section shall not invalidate any act of or transaction entered into, by, or on behalf of a company.

121.

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121. (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 filed with the Registrar-General by or on behalf of a company, unless, before the registration of the articles or the publication of the prospectus, or the filing of the statement in lieu of prospectus, as the case may be, he has by himself or by his agent authorised in writing—

—
Restrictions
on appoint-
ment or
advertis-
ement of
director.

19 and 20
Geo. V, c.
23, s. 140.

(a) signed and filed with the Registrar-General for registration a consent in writing to act as such director; and

(b) either—

(i) signed the memorandum for a number of shares not less than his qualification, if any;

(ii) taken from the company and paid or agreed to pay for his qualification shares, if any;

(iii) signed and filed with the Registrar-General for registration an undertaking in writing to take from the company and pay for his qualification shares, if any; or

(iv) made and filed with the Registrar-General 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 filed with the Registrar-General for registration an undertaking to take from the company and pay for his qualification shares, he shall, as regards those shares, be in the same position as if he had signed the memorandum for that number of shares.

(3) On the application for registration of the memorandum and articles of a company the applicant shall file with the Registrar-General a list of the persons who

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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 guilty of an offence.

Penalty: Fifty pounds.

(4) This section shall not apply to—

- (a) a company not having a share capital;
- (b) a proprietary company;
- (c) a company which was a proprietary 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.

Qualification of director.

19 and 20

Geo. V,

c. 28, s. 141.

122. (1) Without prejudice to the restrictions imposed by section one hundred and twenty-one of this Act 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 is fixed by the articles.

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

(3) The office of director of a company shall be vacated if the director does not within two months from the date of his appointment, or within such shorter time as is 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 re-appointed director of the company until he has obtained his qualification.

(5) If after the expiration of the said period or shorter time any unqualified person acts as a director of the company, he shall be guilty of an offence.

Penalty: Five pounds for every day between the expiration of the said period or shorter time or the day on which he ceased to be qualified, as the case may be, and the last day on which it is proved that he acted as a director.

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123. (1) Any person who, being an undischarged bankrupt, acts as director of, or directly or indirectly takes part in or is concerned in the management of, any company, except with the leave of the court by which he was adjudged bankrupt, shall be guilty of an offence.

Penalty: On conviction on indictment, imprisonment for two years; and on summary conviction, five hundred pounds, or imprisonment for six months or both.

(2) 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 before the date of the commencement of this Act 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.

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

(4) In this section—

“ company ” includes an unregistered company and a foreign company.

“ official receiver ” means the official receiver in bankruptcy.

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

Validity of acts of directors.

Ibid. s. 142.

125. (1) Every company shall keep at its registered office a register of its directors containing with respect to each of them the following particulars, that is to say—

(a) in the case of an individual, his present Christian name and surname (and if known, any former Christian name or surname), his usual residential address, his nationality, and, if that

nationality

Register of directors.

Ibid. s. 144.

1899, No.

40, ss. 70,

71.

nationality is not the nationality of origin, his nationality of origin, and his business occupation, if any, or, if he has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships; and

(b) in the case of a corporation, its corporate name and registered or principal office.

(2) The company shall, within the periods respectively mentioned in this section, file with the Registrar-General a return in the prescribed form containing the particulars specified in the register and a notification in the prescribed form of any change among its directors or in any of the particulars contained in the register.

(3) The period within which the return is to be filed shall be a period of fourteen days from the appointment of the first directors of the company, and the period within which the notification of a change is to be filed shall be fourteen days from the happening thereof.

(4) The register to be kept under this section shall during business hours (subject to such reasonable restrictions as the company by its articles or in general meeting imposes so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member of the company without charge and of any other person on payment of one shilling, or such less sum as the company prescribes, for each inspection.

(5) If any inspection required under this section is refused or if default is made in complying with subsection one or subsection two of this section, the company and every officer of the company who is in default shall be guilty of an offence.

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

(7) For the purposes of this section, a person in accordance with whose directions or instructions the directors of a company are accustomed to act shall be deemed to be a director and officer of the company.

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

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

(3) Any director, manager, or proposer who makes default in adding such a statement, and any director or manager who makes default in giving such a notice, shall be guilty of an offence, and shall be liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default.

Penalty: One hundred pounds.

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

(2) Upon the passing of any such special resolution the provisions thereof shall be as valid as if they had been originally contained in the memorandum.

128. (1) Subject to the provisions of this section, the directors of a company shall, on a demand in that behalf made to them in writing by members of the company entitled to not less than one-fourth of the aggregate number of votes to which all the members of the company are together entitled, furnish to all the members of the company within a period of one month from the receipt of the demand a statement, certified as correct, or with such qualifications as are necessary, by the auditors of the company, showing as respects each of the last three preceding years in respect of which the accounts of the

company

Limited company may have directors with unlimited liability.
19 and 20 Geo. V. c. 23, s. 146. cf. 1899, No. 40, ss. 34, 37.

Special resolution of limited company making liability of directors unlimited.

19 and 20 Geo. V. c. 23, s. 147. 1899, No. 40 s. 38.

Statement as to remuneration of directors to be furnished to shareholders.

19 and 20 Geo. V. c. 23, s. 148.

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company have been made up the aggregate amount received in each such year by way of remuneration or other emoluments by persons being directors of the company, whether as such directors or otherwise in connection with the management of the affairs of the company, and there shall, in respect of any such director who is—

- (a) a director of any other company which is in relation to the first-mentioned company a subsidiary company; or
- (b) by virtue of the nomination, whether direct or indirect, of the company a director of any other company,

be included in the aggregate amount any remuneration or other emoluments received by him for his own use whether as a director of, or otherwise in connection with the management of the affairs of, that other company:

Provided that—

- (i) a demand for a statement under this section shall be of no effect if the company within one month after the date on which the demand is made resolve that the statement shall not be furnished:

Provided that a director shall not, as a shareholder, vote, and, if he do vote, his vote shall not be counted on any resolution of the company made under this paragraph; and

- (ii) it shall be sufficient to state the total aggregate of all sums paid to or other emoluments received by all the directors in each year without specifying the amount received by any individual.

(2) In computing for the purpose of this section the amount of any remuneration or emoluments received by any director, the amount actually received by him shall, if the company has paid on his behalf any sum by way of income tax in respect of the remuneration or emoluments, be increased by the amount of the sum so paid.

(3) Any director who fails to comply with the requirements of this section shall be guilty of an offence.

Penalty: Fifty pounds.

(4)

(4) In this section the expression "emoluments" includes fees, percentages and other payments made or consideration given, directly or indirectly, to a director as such, and the money value of any allowances or perquisites belonging to his office.

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

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

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

(4) Any director or secretary who fails to comply with the provisions of this section shall be guilty of an offence.

Penalty: One hundred pounds.

(5) Nothing in subsections one, two or three of this section shall be taken to prejudice the operation of any rule of law restricting directors of a company from being interested in contracts with the company.

(6) A director of a company, whether incorporated under this Act or any other Statute or incorporating instrument, shall not be deemed to be interested, or to have been at any time interested, in any contract

Disclosure
by directors
of interest
in contracts.
19 and 20
Geo. V, c.
23, s. 149.

or

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or proposed contract with the company, merely by reason of the fact that he is or was a policy holder in a mutual life assurance society, with whom the company of which he is a director enters into or proposes to enter into or has entered into a contract.

This subsection shall take effect notwithstanding any provisions in any Act or in any articles of association or deed of settlement or regulations of the company, unless the company by its articles of association or deed of settlement or regulations expressly excludes the application of this subsection to the company.

For the purposes of this subsection a mutual life assurance society includes any company or corporation carrying on the business of life assurance the whole or any part of the profits of which are divisible amongst its policy holders or any of them.

(7) A director of a company shall not be deemed to be interested or to have been at any time interested in any contract or proposed contract relating to any loan to the company merely by reason of the fact that he has guaranteed or joined in guaranteeing the repayment of such loan or any part of such loan.

Provision as to payments received by directors for loss of office or on retirement.
19 & 20 Geo. V. c. 23, s. 150.

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

(2) Where, in contravention of this section, a payment is made to a director of the company, the amount received shall be deemed to have been received by him in trust for the company.

(3) Where a payment is to be made to a director of a company in connection with the transfer to any persons, as a result of an offer made to the general body of shareholders, of all or any of the shares in the company, that director shall take all reasonable steps to secure

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

(4) Any such director who fails to take all such reasonable steps, and any person who has been properly required by any such director to include the particulars in or send them with any such notice who fails so to do, shall be guilty of an offence, and if the requirements of subsection three of this section are not complied with in relation to any such payment as is mentioned in that subsection, any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any persons who have sold their shares as a result of the offer made.

Penalty: Twenty-five pounds.

(5) If in connection with any such transfer the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of the like shares or any valuable consideration is given to any such director, the excess or the money value of the consideration, as the case may be, shall, for the purposes of this section, be deemed to have been a payment made to him by way of compensation for loss of office or as consideration for or in connection with his retirement from office.

(6) Nothing in this section shall be taken to prejudice the operation of any rule of law requiring disclosure to be made with respect to any such payments as are mentioned in this section or with respect to any other like payments made or to be made to the directors of a company.

131. If in the case of any company, not being a proprietary company, provision is made by the articles or by any agreement entered into between any person and the company for empowering a director of the company to assign his office as such to another person, any assignment of office made in pursuance of that provision shall, notwithstanding anything to the contrary contained in the provision, be of no effect unless and until it is approved by a special resolution of the company.

Provisions
as to assign-
ment of
office by
directors.
19 and 20
Geo. V, c.
23, s. 151.

132.

No. 33, 1936.

Provisions
as to
liability of
officers and
auditors.19 and 20
Geo. V, c.
23, s. 152.

132. Subject to the provisions of this section, any provision, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any director, manager, or officer of the company, or any person (whether an officer of the company or not) employed by the company or any auditor from, or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company shall be void:

Provided that—

- (a) in relation to any such provision which is in force at the date of the commencement of this Act, this section shall have effect only on the expiration of a period of six months from that date;
- (b) nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force; and
- (c) notwithstanding anything in this section, a company may, in pursuance of any such provision, indemnify any such director, manager, officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under section three hundred and sixty-one of this Act in which relief is granted to him by the court.

DIVISION 9.—*Arrangements and reconstructions.*

Power to
compromise
with
creditors
and
members.

Ibid. s. 153.

133. (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the court may, on the application in a summary way of the company or of any creditor or member of the company, or, in the case of a company being wound up, of the liquidator, order a meeting of the

the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the court directs.

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the court, be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(3) An order made under subsection two of this section shall have no effect until an office copy of the order has been filed with the Registrar-General for registration, and a copy of every such order shall be annexed to every copy of the memorandum of the company issued after the order has been made, or, in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

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

Penalty: One pound for each copy in respect of which default is made.

(5) In this section—

“ Company ” means any company liable to be wound up under this Act.

“ Arrangement ” includes a re-organisation of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods.

134. (1) Where an application is made to the court under section one hundred and thirty-three of this Act for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the court

Provisions for facilitating reconstruction and amalgamation of companies.
19 and 20 Geo. V, c. 23, s. 154.

No. 33, 1936.

— court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as "a transferor company") is to be transferred to another company (in this section referred to as "the transferee company"), the court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters:—

- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;
- (b) the allotting or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;
- (c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;
- (d) the dissolution, without winding up, of any transferor company;
- (e) the provision to be made for any persons, who within such time and in such manner as the court directs, dissent from the compromise or arrangement; and
- (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(2) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred

transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.

The order so far as regards land shall not take effect until it is registered in the office of the Registrar-General in the manner and on payment of the fees prescribed by regulations under the Conveyancing Act, 1919-1932, nor in the case of land subject to the provisions of the Real Property Act, 1900, until the Registrar-General has made in the register book under that Act all such entries as are necessary to give effect to the order.

(3) Where an order is made under this section, every company in relation to which the order is made shall cause an office copy thereof to be filed with the Registrar-General for registration within thirty days after the making of the order, and if default is made in complying with this subsection, the company and every officer of the company who is in default shall be guilty of an offence.

(4) In this section—

“Property” includes property, rights and powers of every description.

“Liabilities” includes duties.

(5) Notwithstanding the provisions of subsection five of section one hundred and thirty-three, “company” in this section does not include any company other than a company within the meaning of this Act.

135. (1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as “the transferor company”) to another company, whether a company within the meaning of this Act or not (in this section referred to as “the transferee company”), has within four months after the making of the offer in that behalf by the transferee company been approved by the holders of not less than nine-tenths in value of the shares affected, the transferee company may, at any time within two months after the expiration of the period of four months, give notice

Power to
acquire
shares of
shareholders
dissenting
from scheme
or contract
approved by
majority.
19 and 20
Geo. V, c.
23, s. 155.

No. 33, 1936.

notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and where such a notice is given the transferee company shall unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders are to be transferred to the transferee company:

Provided that, where any such scheme or contract has been so approved at any time before the commencement of this Act, the court may by order, on an application made to it by the transferee company within two months after the commencement of this Act, authorise notice to be given under this section at any time within fourteen days after the making of the order, and this section shall apply accordingly, except that the terms on which the shares of the dissenting shareholder are to be acquired shall be such terms as the court by the order directs instead of the terms provided by the scheme or contract.

(2) Where a notice has been given by the transferee company under this section and the court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice has been given, or, if an application to the court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares.

(3) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the sums or other consideration were respectively received. (4)

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(4) In this section "dissenting shareholder" includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

PART VIII.

SHARE CAPITAL AND DEBENTURES.

DIVISION 1.—*Prospectus.*

136. (1) Every prospectus issued by or on behalf of a company or in relation to any intended company shall be dated, and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.

(2) A copy of every prospectus proposed to be issued, signed by every person who is named therein as a director or proposed director of the company, or by his agent authorised in writing, shall be filed with the Registrar-General for registration on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so filed for registration and duly registered.

(3) The Registrar-General shall not register any prospectus unless it is dated, and the copy thereof signed, in manner required by this section.

(4) Every prospectus issued shall state on the face of it that a copy has been filed for registration as required by this section, and shall also state immediately after such statement that the Registrar-General takes no responsibility as to its contents.

(5) If default is made in complying with any of the provisions of this section, the company, and every person who is knowingly a party to the default, shall be guilty of an offence.

Penalty:

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Penalty: Twenty-five pounds, and, in the case of a continuing offence, five pounds for every day during which the default continues.

Particulars.
19 and 20
Geo. V, c.
23, s. 35.
cf. 1899, No
40, s. 66.
Schedule
Eight.

137. (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 Schedule Eight to this Act and set out the reports specified in Part II of that Schedule, and the said Parts I and II shall have effect subject to the provisions contained in Part III of the said Schedule.

(2) A condition requiring or binding any 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 into an underwriting agreement with respect to the shares or debentures; or
- (b) in relation to shares or debentures which were not offered to the public.

Penalty: Five hundred pounds.

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

- (a) as regards any matter not disclosed, he proves that he was not cognisant thereof; or
- (b) he proves that the non-compliance arose from an honest mistake of fact on his part; or

(c)

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

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

Schedule
Eight.

(5) 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, or to the issue to existing members of a transferor company within the meaning of section two hundred and sixty-nine of this Act of a prospectus or form of application relating to shares in a transferee company within the meaning of that section, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons, but subject to those exceptions, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company, or subsequently.

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

138. Notwithstanding anything contained in section one hundred and thirty-seven of this Act it shall not be necessary in a newspaper advertisement of a prospectus to insert the particulars required by that section except those with respect to the names, descriptions and addresses of the directors or proposed directors respectively and with respect to the minimum subscription on which the directors may proceed to allotment, provided that the advertisement—

Power to
issue
abridged
advertis-
ement.Vic. No.
3,659, s. 89.

(a) states that the requirements of that section have not been fully complied with;

(b)

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- (b) states where copies of the full prospectus and forms of applications for shares may be obtained;
- (c) states that applications for shares will be received only on one of the forms of application referred to and endorsed upon a printed copy of the prospectus; and
- (d) does not contain anything to which the requirements of that section apply and which is not in the prospectus or is inconsistent with the prospectus.

Alteration
of terms
of contract.
18 and 20
Geo. V, c.
23, s. 36.

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

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

Liability
for state-
ments in
prospectus.
Ibid. s. 37.

140. (1) Where a prospectus invites persons to subscribe for shares in or debentures of a company—

- (a) every person who is a director of the company at the time of the issue of the prospectus; and
- (b) every person who has authorised himself to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time; and
- (c) every person being a promoter of the company; and
- (d) every person who has authorised the issue of the prospectus,

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 which they may have sustained by reason of any untrue statement therein,

or

or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved—

- (i) 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
- (ii) 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
- (iii) 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
- (iv) that—
 - (a) 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
 - (b) 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
 - (c) 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

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— — —
a public official document, it was a correct and fair representation of the statement or copy of or extract from the document:

Provided that a person shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making any such statement, report, or valuation as is mentioned in subparagraph (b) of paragraph (iv) of this subsection was competent to make it.

(2) Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof, shall be liable to indemnify the person named as aforesaid 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 in defending himself against any action or legal proceedings brought against him in respect thereof.

(3) Every person who, by reason of his being a director, or named as a director or as having agreed to become a director, or of his having authorised the issue of the prospectus, becomes liable to make any payment under this section may recover contribution, as in cases of contract, from any other person, who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable, was, and that other person was not, guilty of fraudulent misrepresentation.

(4) For the purposes of this section "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.

"Expert"

“Expert” includes engineer, valuer, accountant, and other person whose profession gives authority to a statement made by him.

141. (1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company, and all enactments and rules of law as to the contents of prospectuses and to liability in respect of a statement in and an omission 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 any misstatement contained in the document or otherwise in respect thereof.

Document
containing
offer for
sale deemed
a pros-
pectus.
19 and 20
Geo. V, c.
23, s. 38.

(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 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 one hundred and thirty-six of this Act as applied by this section shall have effect as though the persons making the offer were persons named in a prospectus as directors of a company, and section one hundred and thirty-seven of this Act as applied by this section shall have effect as if it required a prospectus to

No. 33, 1936. to state in addition to the matters required by that section to be stated in a prospectus—

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

(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 by which the offer for sale to the public is made is signed on behalf of the company or firm by two directors of the company or not less than half of the partners of the firm, as the case may be, and any such director or partner may sign by his agent authorised in writing.

Division 2.—*Allotment.*

Minimum subscription.

19 and 20
Geo. V, c.
23, s. 39.

Schedule
Eight.

142. (1) No allotment shall be made of any share capital of a company offered to the public for subscription, unless—

- (a) 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 six of Part I of Schedule Eight to this Act has been subscribed; and
- (b) the sum payable on application for the amount so stated has been paid to and received by the company.

For the purposes of this subsection a sum shall be deemed to have been paid to and received by the company if a cheque for that sum has been received in good faith by the company and the directors of the company have no reason for suspecting that the cheque will not be paid.

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

(3)

(3) The amount payable on application on each share shall not be less than five per centum of the nominal amount of the share.

(4) If the conditions mentioned in subsections one, two and three of this section have not been complied with on the expiration of sixty 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 eighty days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per centum per annum from the expiration of the eightieth day:

Provided that a director shall not be liable if he proves that the loss 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 except subsection three thereof shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

143. (1) Where a company, having a share capital, does not issue a prospectus on or with reference to its formation, or issues such a prospectus but does not proceed to allot any of the shares offered to the public for subscription, the company shall not allot any of its shares or debentures unless at least seven days before the first allotment of either shares or debentures there has been filed with the Registrar-General a statement in lieu of prospectus signed by every person who is named therein as a director or a proposed director of the company or by his agent authorised in writing, in the form and containing the particulars set out in Schedule Nine to this Act.

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

(3) If a company acts in contravention of the provisions of this section, the company and every director who knowingly authorises or permits the contravention shall be guilty of an offence.

Penalty: One hundred pounds.

144.

Statement
in lieu of
prospectus.
19 and 20
Geo. V, c.
23, s. 40.

Schedule
Nine.

No. 33, 1936.

Irregular
allotment.
19 and 20
Geo. V, c.
23, s. 41.

144. (1) An allotment made by a company to an applicant in contravention of the provisions of section one hundred and forty-two or section one hundred and forty-three of this Act 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 three months after the date of the allotment, and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

(2) If any director of a company knowingly contravenes or permits or authorises the contravention of any of the provisions of section one hundred and forty-two or section one hundred and forty-three of this Act 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.

(3) Every person who becomes liable to make any payment under this section may recover contribution as in cases of contract from any other person who, if sued separately, would have been liable to make the same payment.

Return as to
allotments.
Ibid. s. 42.

145. (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 file with the Registrar-General for registration—

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

(b)

(b) in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing evidencing 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, or when the contract is not reduced to writing and the issue of the shares is made pursuant to a provision in the memorandum or articles a statement to that effect identifying the particular provision and giving particulars of the consideration in respect of which the allotment was made and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(2) Where such a contract as abovementioned is not reduced to writing, the company shall within one month after the allotment file with the Registrar-General for registration the prescribed particulars of the contract.

(3) If default is made in complying with this section, every director, manager, secretary, or other officer of the company, who is knowingly a party to the default, shall be guilty of an offence:

Provided that in case of default in filing with the Registrar-General within one month after the allotment any document required to be filed 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 file 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 filing of the document for such period as the court may think proper.

Penalty: Fifty pounds for every day during which the default continues.

DIVISION 3.—*Commissions and discounts.*

146. (1) It shall be lawful for a company to pay a commission to any person in consideration of his agreeing to subscribe, whether absolutely or conditionally, for any

How far lawful.
Geo. V, c. 23.
s. 43.

any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, if—

- (a) the payment of the commission is authorised by the articles; and
- (b) the commission paid or agreed to be paid does not exceed ten per centum of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is the less; and
- (c) the amount or rate per 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 filed before the payment of the commission with the Registrar-General 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 the manner prescribed in paragraph (c) of this subsection.

(2) Save as provided in subsection one of this section, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount, or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional,

for

for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

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

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

(5) If default is made in complying with the provisions of this section relating to the filing with the Registrar-General of the statement in the prescribed form, the company and every officer of the company who knowingly and wilfully authorises or permits the default shall be guilty of an offence.

Penalty: Twenty-five pounds.

(6) Where a discount or allowance has been allowed in respect of a share the amount or value allowed by way of discount or allowance shall be deemed to have been paid in cash by the member to the company.

147. (1) Where a company has paid any sums by way of commission in respect of any shares or debentures, or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed, 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 guilty of an offence.

Penalty: Five pounds.

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Financial assistance for the purchase of shares.
How far lawful.

19 & 20 Geo. V, c. 23, s. 45.

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

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

- (a) where the lending of money is part of the ordinary business of a company, the lending by a company of money in the ordinary course of its business;
- (b) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase by trustees of fully-paid shares in the company to be held by or for the benefit of employees of the company, including any director holding a salaried employment or office in the company;
- (c) the making by a company of loans to persons, other than directors, bona fide in the employment of the company with a view to enabling those persons to purchase fully-paid shares in the company to be held by themselves by way of beneficial ownership.

(2) The aggregate amount of any outstanding loans made under the authority of paragraphs (b) and (c) of the proviso to subsection one of this section shall be shown as a separate item in every balance-sheet of the company.

(3) If a company acts in contravention of this section the company and every officer of the company who is in default shall be guilty of an offence.

Penalty: One hundred pounds.

Redeemable preference shares.

Issue and redemption.
Ibid. s. 46.

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

Provided

Provided that—

- (a) no such shares shall be redeemed except out of profits which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption;
- (b) no such shares shall be redeemed unless they are fully paid;
- (c) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall out of profits which would otherwise be available for dividend be transferred to a reserve fund, to be called "the capital redemption reserve fund," a sum equal to the amount applied in redeeming the shares, and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve fund were paid up share capital of the company;
- (d) where any such shares are redeemed out of the proceeds of a fresh issue, the premium, if any, payable on redemption, must have been provided for out of the profits of the company before the shares are redeemed.

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

If a company fails to comply with the provisions of this section the company and every officer of the company who is in default shall be guilty of an offence.

Penalty: One hundred pounds.

(3) 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 in the articles of the company.

(4)

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

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

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

Power to issue shares at a discount.

19 and 20 Geo. V, c. 28, s. 47.

150. (1) Subject to the provisions of this section, a company may issue at a discount shares in the company of a class already issued, provided that—

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

(2)

(2) Where a company has passed a resolution authorising the issue of shares at a discount, it may apply to the court for an order sanctioning the issue, and on any such application the court, if, having regard to all the circumstances of the case it thinks proper so to do, may make an order sanctioning the issue on such terms and conditions as it thinks fit.

(3) Every prospectus relating to the issue of the shares and every balance-sheet issued by the company subsequently to the issue of the shares shall contain particulars of the discount to be allowed or allowed as the case may be, on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the prospectus or at the date up to which the balance-sheet is made as the case may be.

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

Penalty: Five pounds.

DIVISION 4.—*Share capital.*

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

- (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.

152. 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

Payment of
different
amounts on
shares.

19 and 20
Geo. V, c.
23, s. 48.

1899, No. 40,
s. 54.

19 and 20
Geo. V, c.
23, s. 49.

of

No. 33, 1936.

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

Altering
share
capital.
19 and 20
Geo. V, c.
23, s. 50.

cf. 1899, No.
40, s. 51.

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

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

See Act No.
3659
(Vic.), s. 48.

In the case of a no-liability company the power conferred by paragraph (a) of this subsection shall be subject to the provisions of Part IV of this Act.

(2) The powers conferred by this section must be exercised by special resolution.

(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.

154. (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;
- (b) converted any shares into stock;
- (c) re-converted stock into shares;
- (d) subdivided its shares or any of them;
- (e) redeemed any redeemable preference shares; or
- (f) cancelled any shares, otherwise than in connection with a reduction of share capital under section one hundred and fifty-eight of this Act,

it shall within one month after so doing file a notice thereof with the Registrar-General 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 guilty of an offence.

Penalty: Five pounds.

155. (1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, it shall within fifteen days after the passing of the resolution authorising the increase, file with the Registrar-General a notice of the increase, and the Registrar-General shall record the increase.

(2) The notice to be filed in pursuance of subsection one of this section shall include such particulars as are 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 shall be annexed to the printed copy of the special resolution authorising the increase to be filed pursuant to section ninety-eight of this Act.

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

Penalty: Five pounds.

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Notice to
Registrar-
General of
consolida-
tion of
share capi-
tal, etc.

19 and 20
Geo. V, c.
23, s. 51.

1899, No.
40, s. 22.

Notice of
increase of
share
capital.

19 and 20
Geo. V, c.
23, s. 52.

1899, No.
40, s. 24.

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

19 and 20
Geo. V, c.
28, s. 53.

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

- (a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the amount by which the capital is so increased 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.

Ibid. s. 54.

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

(2) The payment of interest in pursuance of this section shall be subject to the following provisions:—

- (a) no such payment shall be made unless it is authorised by the articles or by special resolution;
- (b) no such payment, whether authorised by the articles or by special resolution, shall be made without the previous sanction of the court;
- (c) before sanctioning any such payment the court may, at the expense of the company, appoint a person to inquire and report to it 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)

- (d) the payment shall be made only for such period as is determined by the court, and that period shall in no case extend beyond the close of the half year next after the half year during which the works or buildings have been actually completed or the plant provided;
- (e) the rate of interest shall in no case exceed four per centum per annum or such other rate as is for the time being prescribed by general rules;
- (f) the payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid; and
- (g) 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.

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

Penalty: Fifty pounds.

158. (1) Subject to confirmation by the court, a company limited by shares or a company limited by guarantee and having a share capital may, if so authorised by its articles, by special resolution reduce its share capital in any way, and in particular, without prejudice to the generality of the provisions of this section, may—

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

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

(2).

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

Application
to court for
confirming
order.

19 and 20
Geo. V, c.
23, s. 56.
cf. 1899,
No. 46,
ss. 42-44.

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

(2) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the court so directs, the following provisions shall have effect, subject nevertheless to subsection three of this section:—

- (a) every creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction;
- (b) the court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day on or before which creditors not entered on the list may claim to be so entered, and after which they shall be excluded from the right of objecting to the reduction; and
- (c) where a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the court may direct, the following amount:—
 - (i) if the company admits the full amount of the debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim; or
 - (ii)

(ii) if the company does not admit and is not No. 33, 1936.

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

(3) Where a proposed reduction of share capital involves either a diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the court may, if having regard to any special circumstances of the case it thinks proper so to do, direct that subsection two of this section shall not apply as regards any class or any classes of creditors.

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

(2) Where the court makes any such order, it may—

(a) if for any special reason it thinks proper so to do, make an order directing that the company shall, during such period, commencing on or at any time after the date of the order, as is specified in the order, add to its name as the last words thereof the words "and reduced"; and

(b) make an order requiring the company to publish as the court directs the reasons for reduction or such other information in regard thereto as the court may think expedient with a view to giving proper information to the public, and, if the court thinks fit, the causes which led to the reduction.

Order confirming reduction.
19 and 20 Geo. V, c. 23, s. 57.
cf. 1899, No. 40,
ss. 41, 42.

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(3) Where a company is ordered to add to its name the words "and reduced," those words shall, until the expiration of the period specified in the order, be deemed to be part of the name of the company.

Registration
of order and
minute of
reduction.
19 and 20
Geo. V, c.
23, s. 58.
1899, No.
40, ss. 46,
47, 48.

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

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

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

(4) The Registrar-General shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

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

(6) The substitution of any such minute for part of the memorandum of the company shall be deemed to be an alteration of the memorandum within the meaning of section twenty-six of this Act.

Liability of
members in
respect of
reduced shares
19 and 20
Geo. V, c. 28,
s. 59.
1899, No. 40,
s. 48.

162. (1) In the case of a reduction of share capital, a member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference, if any, between the amount of the share as fixed by the minute and the amount

amount paid, or the reduced amount, if any, which is to be deemed to have been paid, on the share as the case may be:

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

- (a) every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before that date; and
- (b) if the company is wound up, the court, on the application of any such creditor and proof of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

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

163. If any director, manager, secretary or other officer of the company—

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

he shall be guilty of an offence punishable on indictment.

Penalty: Imprisonment for two years.

164.

Penalty on
concealment
of name
of creditor.
19 and 20
Geo. V, c.
23, s. 60.
1899, No. 49
s. 50.

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Rights of
holders of
special
classes
of shares.19 and 20
Geo. V, c.
23, s. 61.

164. (1) If in the case of a company, the share capital of which is divided into different classes of shares, provision is made by the memorandum or articles for authorising the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of that 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 shall be made within thirty 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 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 file an office copy of the order with the Registrar-General, and, if default is made in complying with this provision, the company and every officer of the company who is in default shall be guilty of an offence.

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

DIVISION

DIVISION 5.—*Workers' shares.*

165. (1) Subject to the provisions of this Division, ^{Special shares without nominal value.} a company limited by shares may, unless expressly prohibited from so doing by its memorandum or articles, issue to persons for the time being employed in the service of the company special shares, in this Act referred to as workers' shares. ^{cf. 1933, No. 29 (N.Z.), s. 59.}

Such shares shall have no nominal value, and shall not form part of the capital of the company.

(2) The shares shall be numbered consecutively, commencing with the number one.

(3) The shares shall not be transferable, save in accordance with the provisions, if any, in that behalf of the articles of the company.

(4) The holders of the shares shall be entitled, to such extent and in such manner as may be determined by the memorandum or articles of the company, to attend and vote at meetings of shareholders, and to share in the profits of the company, or in its assets in the event of its being wound up.

(5) Except as otherwise expressly provided by this Act or by the memorandum or articles of the company, the holders of the shares shall have and enjoy all the privileges of other shareholders.

(6) Nothing in section one hundred and forty-five of this Act shall extend to workers' shares.

166. If the holder of any workers' shares ceases to be employed in the service of the company, whether by reason of death or otherwise, he shall be deemed to have surrendered his shares, and in such case there shall be payable to him or his executor or administrator, as the case may be, either in cash or in capital shares the value of those workers' shares computed in accordance with the articles of the company.

167. A company issuing workers' shares may, if authorised so to do by its articles, issue capital shares ^{Payment by capital shares.} in payment or satisfaction wholly or in part of any share ^{Ibid.}

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in the profits of a company to which the holders of workers' shares or their executors or administrators may by virtue of those workers' shares from time to time become entitled under the articles of the company.

Entries in
register.
1933, No.
29 (N.Z.),
s. 59.

168. (1) A company having issued workers' shares shall cause to be entered in its register of members from time to time—

- (a) full particulars as to all workers' shares issued by the company with the names and addresses of the persons to whom the shares have been issued;
- (b) particulars as to all workers' shares surrendered to the company, and of the amounts paid by the company to the shareholders on such surrender;
- (c) any other consideration given by the company in respect of any surrender of workers' shares to the company.

(2) A copy or abstract in the prescribed form of the particulars shall in each year be filed with the Registrar-General with the annual summary required by section eighty-eight of this Act.

DIVISION 6.—*Debentures.*

Inspection
of register
of debenture
holders.
19 and 20
Geo. V, c.
23, s. 73.

169. (1) Every register of holders of debentures of a company shall, except when duly closed, be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, 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.

For the purposes of this subsection, 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 is therein specified.

(2)

(2) Every registered holder of debentures and ^{No. 33, 1926.} every holder of shares in a company may require a copy of the register of the holders of debentures of the company or any part thereof on payment of sixpence for every hundred words required to be copied.

(3) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust deed of the sum of one shilling or such less sum as is prescribed by the company, or, where the trust deed has not been printed, on payment of sixpence for every hundred words required to be copied.

(4) If inspection is refused, or a copy is refused or is not forwarded within a reasonable time after such request, the company and every officer of the company who is in default shall be guilty of an offence.

Penalty: Five pounds, and in addition two pounds for every day after the first day during which the default or refusal continues.

(5) Where a company is so in default, 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.

170. A condition contained in any debentures or in Perpetual any deed for securing any debentures, whether issued or ^{19 and 20} debentures. executed before or after the commencement of this Act, ^{Geo. V, c. 23,} shall not be invalid by reason only that the debentures ^{s. 74.} are thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of law or equity to the contrary notwithstanding.

171. (1) Where either before or after the commencement of this Act a company has redeemed any debentures previously issued, then—

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

(b)

Power to re-issue redeemed debentures in certain cases.
19 and 20
Geo. V, c.
23, s. 75.
1918, No. 37,
s. 14.

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(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 commencement of this Act 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 commencement of this Act, shall not be treated as the issue of a new debenture for the purposes of any provision limiting the amount or number of debentures to be issued.

(6) Where any debenture which has been redeemed before the commencement of this Act is reissued after such commencement the reissue of the debenture shall not prejudice any right or priority which any person would have had under or by virtue of any mortgage or charge created before the commencement of this Act if section fourteen of the Companies (Registration of Securities) Act, 1918, had been enacted in this Act instead of this section.

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172. 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.

Specific performance of contracts to subscribe for debentures.
19 and 20 Geo. V, c. 23, s. 76.

173. (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 debenture holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, any debts in respect of the wages or salary (whether or not earned wholly or in part by way of commission, not being an overriding commission) of any clerk, commercial traveller, servant, labourer or workman which in every winding-up are under the provisions of Part X of this Act relating to preferential payments to be paid in priority to other debts, shall be paid out of any assets coming to the hands of the receiver or other person taking possession in priority to any claim for principal or interest in respect of the debentures.

(2) The periods of time mentioned in the provisions of Part X of this Act shall be reckoned from the date of the appointment of the receiver or of possession being taken, 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.

(4) This section applies only where the charge is created after the commencement of this Act.

DIVISION 7.—*Dealings in shares and debentures.*

174. (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.

Nature of shares.
Ibid. s. 62.
cf. 1899, No. 40, s. 235.

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

175. Notwithstanding anything in the articles of a company—

(a) 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; (b) Manner of transfer.
19 and 20 Geo. V, c. 23, s. 63.

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(b) a transfer in or to the effect of the form set out in clause eighteen of Table A of Schedule Two of this Act shall in all cases be regarded (in respect of form) as a proper instrument of transfer of shares.

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

Transfer by personal representative.
19 and 20 Geo. V, c. 28, s. 64.
1899, No. 40, s. 236.

Registration of transfer at request of transferor.
19 and 20 Geo. V, c. 28, s. 65.
1899, No. 40, s. 56.

Notice of refusal to register transfer.
19 and 20 Geo. V, c. 28, s. 66.

Duties of company with respect to issue of certificates.
Ibid. s. 67.

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

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

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

(2) If default is made in complying with this section, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default shall be guilty of an offence.

Penalty: Five pounds for every day during which the default continues.

179. (1) Every company shall—

(a) within two months after the allotment of any of its shares, debentures or debenture stock, complete and have ready for delivery the certificates of all such shares, the debentures, and the certificates of the debenture stock allotted;

(b)

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(b) within two months after the date on which a transfer of any of its shares, debentures or debenture stock is lodged with the company, complete and have ready for delivery the certificates of the shares transferred, the debentures and the certificates of the debenture stock transferred.

The foregoing provisions of this subsection shall not apply—

- (i) where the shares, debentures or debenture stock were allotted before the commencement of this Act and the conditions of the issue of the shares, debentures or debenture stock otherwise provide; or
- (ii) in the case of an existing company unless the articles of the company in force at the commencement of this Act otherwise provide.

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

(2) If default is made in complying with this section, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default shall be guilty of an offence.

Penalty: Five pounds for every day during which the default continues.

(3) If any company on whom a notice has been served requiring the company to make good any default in complying with the provisions of subsection one of this section 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 is 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, or partly by one and partly by the other.

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Certificate to
be evidence
of title.
19 and 20
Geo. V, c. 23,
s. 68.
1899, No. 40,
s. 238.

Evidence of
grant of
probate.
19 and 20
Geo. V, c. 23,
s. 69.

Lost share
certificates.
S.A., No.
2196, s.
370.

180. 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.

181. 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.

182. In the event of the loss, defacement or destruction of any share certificate, letter of allotment, transfer receipt or any other document of title to shares, it shall be lawful for a company, on request in writing of the person entered in the register of members as the holder of such shares, to issue a duplicate thereof upon the following conditions:—

- (a) an advertisement shall be inserted in one daily newspaper in Sydney and in the Gazette, and when the registered office of the company is situated more than fifty miles from Sydney in addition in a newspaper published in the district in which that office is situated, containing particulars of the lost document, and giving notice of the intention of the company at the expiration of twenty-one days from the publication of such advertisement to issue a duplicate thereof;
- (b) the company shall require the applicant, and such other persons as it may see fit, to make statutory declarations of and as to the circumstances surrounding the loss, defacement or destruction;
- (c) the company may require such indemnities, bonds or guarantees from the applicant or such other person as it sees fit to protect it from any claim or loss arising by reason of or incidental to the issue of such duplicate;
- (d) any document issued hereunder shall bear indorsed on the face thereof the words "Issued in lieu of lost (defaced or destroyed) share certificate or letter of allotment or transfer receipt," as the case may be;

(e)

- (e) within seven days from the issue of such substitute document the company shall file a copy of the said advertisement (where inserted) and details of the substitute document so issued with the Registrar-General;
- (f) all costs and expenses of and incidental to the issue of a substitute document hereunder shall be at the cost of the owner of the lost document:

Provided that where a defaced document is produced to the company for cancellation with the application for a duplicate the provisions of paragraphs (a) and (e) of this section shall not apply.

183. Any person who falsely and deceitfully personates any owner of any share or interest in any company, or of any share warrant or coupon (issued before the commencement 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, shall be guilty of an offence.

Penalty: Imprisonment for ten years.

Penalty for
personation
of share-
holder.

19 and 20
Geo. V, c. 23,
s. 71.

PART IX.

REGISTRATION OF CHARGES.

184. In this Part "Charge" includes "Mortgage."

Definition
of charge.

185. (1) Every charge created after the commencement of this Act by a company and being either—

Registration
of charges
created by
companies.

- (a) a charge for the purpose of securing any issue of debentures, not being a specific charge over lands duly registered under the provisions of the Real Property Act, 1900, or the Registration of Deeds Act, 1897, or a specific charge over any lease, claim or tenement under and subject to the laws relating to mining; or

1918, No. 37,
s. 3.

cf. Q. 22
Geo. V, c. 53,
s. 84.

(b)

No. 33, 1936.cf. Q. 22
Geo. V, c. 53,
s. 84 (2)
(1).

- (b) a charge on uncalled share capital of the company; or
- (c) a charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale; or
- (d) a charge on book debts of the company; or
- (e) a floating charge on the undertaking or property of the company; or
- (f) a charge on calls made but not paid; or
- (g) a charge on goodwill; or
- (h) a charge created or evidenced by an instrument which, if executed by an individual, would require registration as a lien on crops, lien on wool or stock mortgage under the provisions of the Liens on Crops and Wool and Stock Mortgages Act of 1898,

shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company unless the instrument (if any) by which the charge is created or evidenced, or a copy thereof accompanied by an affidavit verifying the execution of the charge, and in the case of a copy also verifying it as a true copy of such charge, is filed with the Registrar-General for registration in manner required by this Part within thirty days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured.

(2) When a charge becomes void under this section the moneys secured thereby shall immediately become payable.

1918, No. 37,
s. 3 (10).
Q. 22 Geo.
V, c. 53,
s. 84 (4).

(3) Notwithstanding anything in any other Act no charge requiring registration under this Part shall require to be filed or registered or be subject to avoidance under the provisions of the Bills of Sale Act of 1898 or the Liens on Crops and Wool and Stock Mortgages Act of 1898, and upon registration under this Part a charge which, but for this subsection would require to be filed or registered under the provisions of either of the last-mentioned Acts, shall for all purposes have effect and be as valid as if the same had been duly filed or registered thereunder.

(4)

(4) In the case of a charge created out of the State, thirty days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in the State, shall be substituted for thirty days after the date of the creation of the charge, as the time within which the instrument or copy is to be filed with the Registrar-General.

No. 33, 1936
1918, No. 37,
s. 3 (1).

(5) Where a charge is created in the State but comprises property outside the State, the instrument creating or purporting to create the charge or a copy thereof, accompanied by a verifying affidavit as aforesaid, may be filed for registration under this section notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situate.

(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 filed with the Registrar-General within thirty 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, or if it or they is or are executed out of the State then within thirty days after the date on which it or they would in due course of post if despatched with due diligence have been received in the State, the following particulars:—

- (a) the total amount secured by the whole series;
- (b) the dates of the resolutions authorising the issue of the series and the date of the covering deed, if any, by which the security is created or defined;

(c)

No. 33, 1936.

- (c) a general description of the property charged;
- and
- (d) the names of the trustees, if any, for the debenture holders;

together with the deed containing the charge or a verified copy thereof or, if there is no such deed one of the debentures of the series.

Where more than one issue is made of debentures in the series, there shall be filed with the Registrar-General 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.

1918, No. 37,
s. 3 (4).

(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 filed for registration under this Part 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.

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) This Part shall extend to any mortgage or charge created by a company within thirty days before the commencement of this Act, but not registered pursuant to the Companies (Registration of Securities) Act, 1918, before such commencement save that the time within which the mortgage or charge is to be registered shall be within thirty days after such commencement.

Duty of
company to
register
charges
created by
company.
Ibid.
s. 3 (7).

186. (1) A company shall file with the Registrar-General for registration the instrument (if any) by which the charge is created or evidenced or a copy thereof, accompanied by an affidavit verifying the execution of the charge, and in the case of a copy also verifying it as a true copy of such charge and the prescribed particulars thereof

thereof, and in the case of issues of debentures of a series, ^{No. 33, 1936.} requiring registration under section one hundred and eighty-five of this Act the particulars set out in subsection seven of that section, but registration of any such charge may be effected on the application of any person interested therein.

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

(3) If any company makes default in filing with ^{1918, No. 37,} the Registrar-General for registration the instrument ^{s. 10 (1).} (if any) by which any charge is created or the verified copy thereof and the prescribed particulars thereof, or the particulars of the issues of debentures of a series, requiring registration together with the deed containing the charge or a verified copy thereof or if there is no such deed one of the debentures of the series within the respective times limited in that behalf in section one hundred and eighty-five, 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 guilty of an offence.

Penalty: Fifty pounds for every day during which the default continues.

187. (1) The Registrar-General shall keep, with respect to each company, a register in accordance with the prescribed form of all the charges requiring registration under this Part of this Act, and shall 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 seven of section one hundred and eighty-five of this Act;

(b) in the case of any other charge—

- (i) the date of its creation; and
- (ii) the amount secured by the charge; and
- (iii)

No. 33, 1936.1918, No. 57,
s. 3 (5).*Ibid.*
s. 3 (8).*cf. Ibid.* s. 9.Endorse-
ment of
certificate
of registra-
tion on
debentures.

Ibid. s. 3
(6).*cf. Ibid.*
s. 10 (3).

(iii) short particulars of the property charged; and

(iv) the persons entitled to the charge.

(2) The Registrar-General 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 instruments or copies of instruments creating any charge filed with the Registrar-General and the register kept in pursuance of this section shall be open to inspection by any person.

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

(5) The Registrar-General shall, without fee, transfer to the register kept under this section the entries in the register kept by the Registrar of Joint Stock Companies under the Companies (Registration of Securities) Act, 1918, and all charges duly registered under that Act shall be deemed to be duly registered under this Part of this Act.

188. (1) The company shall cause a copy of every certificate of registration given under section one hundred and eighty-seven of this Act to be endorsed on every debenture forming one of a series of debentures and on every certificate of debenture stock which is issued by the company, and the payment of which is secured by the charge so registered.

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

(2) If any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock which under the provisions of this section is required to have endorsed on it a copy of a certificate of registration without the copy being so endorsed upon it, he shall be guilty of an offence.

Penalty: One hundred pounds.

189. The Registrar-General may, on evidence being given to his satisfaction that the debt for which any registered charge was given has been paid or satisfied, enter a memorandum of satisfaction on the register, and shall, if required, furnish the company with a copy thereof.

No. 33, 1936.
Entry of
satisfaction.
cf. 1918, No.
37, s. 8.

190. (1) The court, on being satisfied that the omission to register a charge within the time required by this Act, or that the omission or mis-statement of any particular with respect to any such charge or in a memorandum of satisfaction, was accidental or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may on the application of the company or any person interested, and on such terms and conditions as seem to the court just and expedient, order that the time for registration shall be extended, or, as the case may be, that the omission or mis-statement shall be rectified.

(2) The power granted to the court by subsection one of this section to grant relief shall extend to the case of an omission to register a mortgage or charge within the time prescribed by the Companies (Registration of Securities) Act, 1918, or by subsection nine of section one hundred and eighty-five (where applicable), or an omission or misstatement of any particular with respect to any such mortgage or charge, or in any memorandum of satisfaction thereof.

191. (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 those powers, file a notice of the fact in the prescribed form with the Registrar-General, and the Registrar-General shall 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, file with the Registrar-General

19 and 20
Geo. V,
c. 23, s. 86.

1918, No. 37,
s. 5 (1).

cf. *Ibid.* s. 6.

No. 33, 1936. Registrar-General a notice to that effect in the prescribed form, and the Registrar-General shall enter the notice in the register of charges.

1918, No. 37, s. 5 (2). (3) If any person makes default in complying with the requirements of this section, he shall be guilty of an offence.

Penalty: Five pounds for every day during which the default continues.

Effect of
subsequent
charges in
certain
cases.
Ibid. s. 3
(11).

192. Where a charge requiring registration under this Act is created within, or on the expiration of, thirty days after the creation of a prior unregistered charge, and comprises all or any part of the property comprised in the prior charge, and the subsequent charge is given as a security for the same debt as is secured by the prior charge, or for any part of that debt, then to the extent to which the subsequent charge is a security for the same debt or part thereof, and so far as respects the property comprised in the prior charge, the subsequent charge shall not be operative or have any validity unless it is proved to the satisfaction of the court having cognizance of the case that it was given in good faith for the purpose of correcting some material error in the prior charge or under other proper circumstances and not for the purpose of avoiding or evading the provisions of this Act.

Copies of
instruments
creating
charges to
be kept by
company.
19 & 20 Geo.
V, c. 23, s. 87.

1918, No. 37,
s. 3 (9).

193. Every company shall cause a copy of every instrument creating any charge requiring registration under this Part of this Act or which required registration under any Act repealed by this Act to be kept at the registered office of the company:

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

Company's
register of
charges.
19 and 20 Geo.
V, c. 23, s. 88.
1899, No. 40,
s. 243.
1918, No. 37,
s. 11.

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

(2)

No. 33, 1936.

(2) An existing company shall incorporate in the register to be kept under this section all entries which are or should have been in the register of charges kept by the company pursuant to any Act repealed by this Act, together with all entries which would have been made therein had this Part been in force at the date of the creation of any such charge and shall within three months of the commencement of this Act file with the Registrar-General the prescribed particulars of such entries.

195. If any director, manager, or other officer of the company knowingly and wilfully authorises or permits the omission of any entry required to be made in pursuance of section one hundred and ninety-four of this Act, or any other contravention of that section, he shall be guilty of an offence.

Penalty: Fifty pounds.

196. The copies of instruments creating any charge requiring registration with the Registrar-General under this Part of this Act, and the register of charges kept in pursuance of section one hundred and ninety-four of this Act shall be open during business hours (but subject to such reasonable restrictions as the company in general meeting imposes, so that not less than two hours in each day shall be allowed for inspection) to the inspection of any creditor or member of the company without fee, and the register of charges shall also be open to the inspection of any other person on payment of such fee, not exceeding one shilling for each inspection, as the company prescribes.

Right to inspect copies of instruments creating charges and company's register of charges.
19 & 20 Geo. V, c. 23, s. 89.
cf. 1918, No. 37, s. 12.

197. If inspection of the copies or register is refused, the Court may by order compel an immediate inspection of the copies or register, and any officer of the company refusing inspection, and every director and manager of the company authorising or knowingly and wilfully permitting the refusal, shall be guilty of an offence.

Penalties.
cf. 1918, No. 37, s. 12.

Penalty: Five pounds, and, in addition, two pounds for every day during which the refusal continues.

198. The provisions of this Part of this Act shall extend to charges on property in the State which are created after the commencement of this Act by a foreign company.

Application of Part to charges created by foreign company.
cf. 19 & 20 Geo. V, c. 23, s. 90.

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PART X.

WINDING UP.

DIVISION 1.—*Preliminary.*

Modes of winding up.

19 and 20 Geo. V, c. 23, s. 156.

199. (1) The winding up of a company may be either—

- (a) by the court;
- (b) voluntary; or
- (c) subject to the supervision of the court.

(2) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of those modes.

Crown bound by certain provisions. N.Z., 1938, No. 29, s. 280.

(3) The provisions of this Part of this Act relating to the remedies against the property of a company, the priorities of debts and the effect of an arrangement with creditors shall bind the Crown.

Liability as contributories of present and past members. 19 and 20 Geo. V, c. 23, s. 157. cf. 1899, No. 40, ss. 33-35.

200. (1) In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities, and the costs, charges, and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, subject to the provisions of subsection two of this section, and the following qualifications:—

- (a) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up;
- (b) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;
- (c) a past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;
- (d) in the case of a company limited by shares no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member;
- (e)

- (e) in the case of a company limited by guarantee, no contribution shall, subject to the provisions of subsection three of this section, be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;
- (f) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract; and
- (g) a sum due to any member of a company, in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(2) In the winding up of a limited company, any director or managing director, whether past or present, whose liability is, under the provisions of this Act, unlimited, shall, in addition to his liability, if any, to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company:

Provided that—

- (a) a past director or managing director shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up;
- (b) a past director or managing director shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office; and
- (c) subject to the articles of the company, a director or managing director shall not be liable to make such further contribution unless the court deems it

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it necessary to require that contribution in order to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding up.

(3) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

Definition of contributory.
19 and 20
Geo. V, c.
23, s. 158.
1899, No.
40, s. 79.

201. The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up, and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories includes any person alleged to be a contributory.

The term, unless the context otherwise requires, includes the holder of fully-paid shares.

Nature of liability of contributory.
19 and 20
Geo. V, c.
23, s. 159.
1899, No. 40,
s. 80.

202. The liability of a contributory shall create a debt of the nature of a specialty accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

Contributors in case of death of member.
19 and 20
Geo. V, c.
23, s. 160.
1899, No. 40,
ss. 81, 114.

203. (1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

(2) If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory, and for compelling payment thereout of the money due.

Contributors in case of bankruptcy of member.
19 and 20
Geo. V, c.
23, s. 161.
1899, No. 40,
s. 82.

204. If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories—

(a) his trustee in bankruptcy shall represent him for all the purposes of the winding-up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the bankrupt

bankrupt, or otherwise to allow to be paid out **No. 33, 1936.** of his assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the assets of the company; and

(b) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

205. (1) The husband of a female contributory married before the date of the commencement of the Married Women's Property Act, 1893, shall, during the continuance of the marriage be liable, as respects any liability attaching to any shares acquired by her before that date, to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be a contributory accordingly.

(2) Subject as aforesaid, nothing in this Act shall affect the provisions of the Married Women's Property Act, 1901.

DIVISION 2.—*Winding up by court.*

206. (1) The court shall have jurisdiction to wind up **Jurisdiction to wind up companies.** any company.

(2) Any of the powers vested in the court by this Part may be exercised in chambers by the Chief Judge in Equity or a Judge sitting in Equity.

207. (1) The court, in making an order under this Act for winding up a company, may direct all subsequent proceedings for winding up the same to be had and taken before the Master in Equity and the Master shall for such winding up have all the powers of the court subject, however, to appeal to the court. The Master may refer any matter to the court which he may think proper to be determined by the court.

(2) Provision may be made by general rules for enabling or requiring all or any of the powers and duties that may be conferred and imposed on the Master in Equity under subsection one of this section to be exercised and performed by an officer or officers of the court other than the Master in Equity, subject, however, to appeal to the court.

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Circum-
stances
in which
company
may be
wound up
by court.
19 and 20
Geo. V, c.
23, s. 168.
cf. 1899, No.
40, s. 84.

208. (1) A company may be wound up by the court if—

- (a) the company has by special resolution resolved that the company be wound up by the court;
- (b) default is made in filing the statutory report or in holding the statutory meeting;
- (c) the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;
- (d) the number of members is reduced, in the case of a proprietary company, below two, or, in the case of any other company, below seven;
- (e) the company is unable to pay its debts; or
- (f) the court is of opinion that it is just and equitable that the company should be wound up.

(2) Without limiting the generality of paragraph (f) of subsection one of this section, the court shall, if it is satisfied that directors have acted in the affairs of a company in their own interests rather than in the interests of the members as a whole, or in any other manner whatsoever which, in the opinion of the court, is unfair or unjust to other members, order the company to be wound up.

Definition
of inability
to pay
debts.

19 and 20
Geo. V, c.
23, s. 169.
1899, No. 40,
s. 86.

209. A company shall be deemed to be unable to pay its debts—

- (a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding fifty pounds then due, has served on the company, by leaving it at the registered office of the company, a demand in writing signed by the creditor or his agent thereunto lawfully authorised, requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or
- (b) if execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(c)

(c) if it is proved to the satisfaction of the court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company.

210. (1) An application to the court for the winding up of a company shall be by petition, presented subject to the provisions of this section either by the company, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately:

Provided that—

(a) a contributory shall not be entitled to present a winding up petition unless—

- (i) either the number of members is reduced, in the case of a proprietary company, below two, or, in the case of any other company, below seven; or
- (ii) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder;
- (iii) upon the ground set forth in subsection two of section two hundred and eight;

(b) a winding-up petition shall not, if the ground of the petition is default in filing the statutory report with the Registrar-General or in holding the statutory meeting, be presented by any person except a shareholder, nor before the expiration of one month after the last day on which the meeting ought to have been held; and

(c) the court shall not give a hearing to a winding-up petition presented by a contingent or prospective creditor until such security for costs has been given as the court thinks reasonable and until a *prima facie* case for winding up has been established to the satisfaction of the court.

Provisions
as to
applications
for winding
up.

19 and 20
Geo. V, c.
23, s. 170.

1899, No. 40,
ss. 89-90.

(2)

No. 33, 1936.

1899, No. 40,
s. 89 (1A).
1934, No. 8,
s. 3 (a).

(2) When an inquiry into the affairs of a company has been made by a Royal Commission appointed under the Royal Commissions Act, 1923-1934, and the Royal Commission recommends that steps should be taken to have the company wound up, a petition in that behalf may be presented by the Attorney-General.

(3) Where a company is being wound up voluntarily or subject to supervision, a winding-up petition may be presented by the liquidator as well as by any other person authorised in that behalf under the other provisions of this section, but the court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.

(4) Where under the provisions of this Part any person as being the husband of a female contributory is himself a contributory, and a share has during the whole or any part of the six months mentioned in subparagraph (ii) of paragraph (a) of the proviso to subsection one of this section been held by or registered in the name of the wife, or by or in the name of a trustee for the wife or for the husband, the share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the husband.

Powers of
court on
hearing
petition.
19 and 20
Geo. V, c.
23, s. 171.

211. (1) On hearing a winding-up petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it thinks fit, but the court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) Where the petition is presented on the ground of default in filing the statutory report with the Registrar-General or in holding the statutory meeting, the court may—

(a) instead of making a winding-up order, direct that the statutory report shall be filed or that a meeting shall be held; and

(b)

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(b) order the costs to be paid by any persons who, in the opinion of the court, are responsible for the default.

212. At any time after the presentation of a winding-up petition, and before a winding-up order has been made, the company, or any creditor or contributory, may, where any action or proceeding against the company is pending, apply to the Supreme Court in its equitable jurisdiction, or to the court in which the action or proceeding is pending to restrain further proceedings in the action or proceeding, and the court to which application is so made may stay or restrain the proceedings accordingly on such terms as it thinks fit.

Power to stay or restrain proceedings against company.
19 and 20 Geo. V, c. 23, s. 172.
1899, No. 40, s. 92.

213. In a winding up by the court any disposition of the property of the company including things in action, and any transfer of shares, or alteration in the status of the members of the company made after the commencement of the winding up, shall, unless the court otherwise orders, be void.

Avoidance of dispositions of property, etc., after commencement of winding up.
19 and 20 Geo. V, c. 23, s. 173.
1899, No. 40, s. 152.

214. Where any company is being wound up by the court, any attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents.

Avoidance of attachments, etc.
19 and 20 Geo. V, c. 23, s. 174.
1899, No. 40, s. 95.

215. Any petition for winding up a company shall constitute a lis pendens within the meaning of any law relating to the effect of a lis pendens upon purchasers or mortgagees and shall be subject to the provisions of Division I of Part XXIII of the Conveyancing Act, 1919-1932.

Petition to be lis pendens.

216. (1) Where before the presentation of a petition for the winding up of a company by the court a resolution has been passed by the company for voluntarily winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the court, on proof of fraud or mistake, thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

Commencement of winding up by the court.
19 and 20 Geo. V, c. 23, s. 175.
1899, No. 40, s. 91.

(2) In any other case, the winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding up.

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Copy of order to be filed with Registrar-General.
 19 and 20 Geo. V, c. 23, s. 176.

1899, No. 40, s. 96.

Actions stayed on winding-up order.
 19 and 20 Geo. V, c. 23, s. 177.

1899, No. 40, s. 94.

Effect of winding-up order.

19 and 20 Geo. V, c. 23, s. 178.

Power of court to appoint liquidators.
Ibid. s. 188.

Appointment and powers of provisional liquidator.

Ibid. s. 184.

Statement of company's affairs to be submitted to liquidator.
Ibid. s. 181.

217. On the making of a winding-up order, an office copy of the order shall forthwith be filed by the company or otherwise as is prescribed, with the Registrar-General, who shall make a minute thereof in his books relating to the company.

218. When a winding-up order has been made, or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court, and subject to such terms as the court imposes.

219. An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

220. For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the court imposes, the court may appoint a liquidator.

A liquidator so appointed shall be described by the style of "the official liquidator" of the particular company in respect of which he is appointed, and not by his individual name.

221. (1) Subject to the provisions of this section the court may appoint a liquidator provisionally at any time after the presentation of a winding-up petition and before the making of a winding-up order.

(2) Where a liquidator is provisionally appointed by the court, the court may limit and restrict his powers by the order appointing him.

222. (1) Where the court has made a winding-up order or appointed a provisional liquidator, there shall, unless the court otherwise orders, be made out and submitted to the liquidator a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing—

- (a) the particulars of its assets, debts, and liabilities;
- (b) the names, residences, and occupations of its creditors;
- (c) the securities held by them respectively;
- (d) the dates when the securities were respectively given; and

(e)

(e) such further or other information as is prescribed No. 33, 1936. or as the liquidator requires.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors, and by the person who is at that date the secretary or other chief officer of the company, or by such of the persons mentioned in paragraphs (a), (b), (c) and (d) of this subsection as the liquidator, subject to the directions of the court, requires to submit and verify the statement, that is to say, persons—

- (a) who are or have been directors or officers of the company;
- (b) who have taken part in the formation of the company at any time within one year before the relevant date;
- (c) who are in the employment of the company, or have been in the employment of the company within one year before the relevant date, and are in the opinion of the liquidator capable of giving the information required; or
- (d) who are or have been within one year before the relevant date officers of or in the employment of a company, which is, or within that year was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within fourteen days from the relevant date, or within such extended time as the liquidator or the court for special reasons appoints.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the liquidator or provisional liquidator, as the case may be, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the liquidator considers reasonable, subject to an appeal to the court.

(5) If any person, without reasonable excuse, makes default in complying with the requirements of this section he shall be guilty of an offence.

Penalty: Ten pounds for every day during which the default continues.

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(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom.

(7) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court and shall, on the application of the liquidator, be punishable accordingly.

(8) In this section "the relevant date" means in a case where a provisional liquidator is appointed, the date of his appointment, and, in a case where no such appointment is made, the date of the winding-up order.

223. Where a winding-up order is made, the liquidator shall, as soon as practicable after the receipt of the statement to be submitted under section two hundred and twenty-two of this Act or, where the court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the court—

- (a) as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities;
- (b) if the company has failed, as to the cause of the failure; and
- (c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.

224. The liquidator may, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed or there has been a concealment of any material fact by any person in its promotion or formation, or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the court.

225. If the liquidator states in any such further report that in his opinion a fraud has been so committed or any material fact has been so concealed the court shall have the

Report by
liquidator.
19 and 20
Geo. V, c.
23, s. 182.

Further
reports.
Ibid. s. 182
(2).

Further
powers of
court.
Ibid. s.
182 (3).

the further powers provided in sections two hundred and fifty-four and two hundred and fifty-five of this Act.

226. (1) Unless the order for winding up appoints a liquidator the following provisions shall have effect on a winding up order being made—

- (a) the person named in the order as provisional liquidator shall act as such until he or another person becomes liquidator;
- (b) the provisional liquidator, or if no provisional liquidator has been appointed then some person appointed by the court for that purpose, shall forthwith summon separate meetings of the creditors and contributories of the company for the purpose of—
 - (i) determining whether or not the creditors and contributories respectively desire to nominate a liquidator and who shall be the person so nominated; and
 - (ii) making a determination relative to a committee of inspection pursuant to section two hundred and thirty-eight of this Act;
- (c) the court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matter, the court shall decide the difference and make such order thereon as the court thinks fit;
- (d) where a liquidator other than the provisional liquidator is appointed pursuant to meetings referred to in paragraph (c) of this section, the liquidator shall pay to the provisional liquidator out of the assets of the company his actual disbursements together with such remuneration as the court may fix.

(2) Where the order for winding up appoints a liquidator the liquidator shall unless the court otherwise orders summon the separate meetings of the creditors and contributories of the company for the purpose mentioned in subparagraph (ii) of paragraph (b) of subsection one of this section, and paragraph (c) of that subsection shall extend to such determinations.

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Requirements to be observed by liquidator.

19 and 20
Geo. V, c.
23, s. 186.

227. (1) Where in the winding up of a company by the court a person is appointed liquidator, that person shall not be capable of acting as liquidator until he has filed a notice of his appointment with the Registrar-General and given security as prescribed by general rules.

(2) The Governor may appoint not more than two fit persons to be available to act as liquidators if appointed so to act by the court or in a voluntary liquidation. The provisions of the Public Service Act, 1902, shall not apply to such appointments or to such persons.

(3) Each such person shall on his appointment by the Governor, give such security as the Governor directs, and shall not be required to give any security pursuant to subsection one of this section unless the court otherwise directs.

General provisions as to liquidators.

19 and 20
Geo. V, c. 23,
2. 188.
cf. 1899, No.
40, s. 102.

228. (1) A liquidator appointed by the court may resign or, on cause shown, be removed by the court.

(2) A person appointed liquidator by the court shall receive such salary or remuneration by way of percentage or otherwise as the court directs, and, if more such persons than one are appointed liquidators, their remuneration shall be distributed among them in such proportions as the court directs.

(3) The court shall fill any vacancy in the office of a liquidator appointed by the court.

(4) If more than one liquidator is appointed by the court, the court shall declare whether any act by this Act required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed.

Acts of liquidator valid, &c.
19 and 20
Geo. V, c.
28, s. 188 (5).

229: Subject to the provisions of section three hundred and ten of this Act, the acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

Custody of company's property.
19 and 20
Geo. V, c.
23, s. 189.
cf. 1899, No.
40, ss. 101,
103 (2).

230: Where a winding-up order has been made or where a provisional liquidator has been appointed, the liquidator, or the provisional liquidator, as the case may be, shall take into his custody, or under his control, all the property and things in action to which the company is or appears to be entitled:

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231. (1) The liquidator in a winding up by the court shall have power with the sanction either of the court or of the committee of inspection—

Powers of liquidator.
19 and 20 Geo. V, c. 23, s. 191. cf. 1899, No 40, ss. 104, 106.

- (a) to bring or defend in the name and on behalf of the company any action or other legal proceeding not being an action to recover a book debt of the company;
- (b) to carry on the business of the company, so far as is necessary for the beneficial winding-up thereof;
- (c) to pay any classes of creditors in full;
- (d) to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;
- (e) to compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory, or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as are agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof;
- (f) to raise on the security of the assets of the company any money requisite.

(2) The liquidator in a winding up by the court shall have power—

- (a) to bring in the name and on behalf of the company an action to recover book debts of the company;
- (b) where the amount involved does not exceed one hundred pounds, without the sanction of either the

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the court or the committee of inspection, to exercise any of the powers contained in paragraphs (d) and (e) of subsection one of this section;

- (c) to sell the real and personal property and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;
- (d) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal;
- (e) to prove, rank, and claim in the bankruptcy of any contributory, for any balance against his estate, and to receive dividends in the bankruptcy, in respect of that balance, as a separate debt due from the bankrupt, and ratably with the other separate creditors;
- (f) to draw, accept, make, and endorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made, or endorsed by or on behalf of the company in the course of its business;
- (g) to take out letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself;
- (h) to appoint an agent to do any business which the liquidator is unable to do himself;
- (i) to appoint a solicitor to assist him in the performance of his duties;
- (j) to do all such other things as are necessary for winding up the affairs of the company and distributing its assets.

(3)

(3) The exercise by the liquidator in a winding up by the court of the powers conferred by this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

232. (1) Subject to the provisions of this Act, the liquidator of a company which is being wound up by the court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories as the case may be.

(3) The liquidator may apply to the court in manner prescribed for directions in relation to any particular matter arising under the winding up.

(4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the affairs and property of the company and the distribution of its assets among the creditors.

(5) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the court, and the court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

233. Every liquidator of a company which is being wound up by the court shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other

Books to be
kept by
liquidator.
Ibid. s. 193.

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other matters as are prescribed, and any creditor or contributory may, subject to the control of the court, personally or by his agent inspect any such books.

Payments of
liquidator
into bank.

19 and 20
Geo. V, c.
23, s. 194.

234. (1) Every liquidator of a company which is being wound up by the court shall, in such manner and at such times as are prescribed or as the court directs, pay the money received by him into such bank and account as the court may from time to time appoint.

(2) If any such liquidator at any time retains for more than ten days a sum exceeding twenty-five pounds, or such other amount as the court in any particular case authorises him to retain, then, unless he explains the retention to the satisfaction of the court, he shall pay interest on the amount so retained in excess at the rate of twenty pounds per centum per annum, and shall be liable to disallowance of all or such part of his remuneration as the court thinks just, and to be removed from his office by the court and shall be liable to pay any expenses occasioned by reason of his default.

(3) A liquidator of a company which is being wound up by the court shall not pay any sums received by him as liquidator into his private banking account.

Penalty: Fifty pounds.

Control of
court over
liquidators.
Ibid. s. 196
(1).

235. The court shall take cognizance of the conduct of liquidators of companies which are being wound up by the court, and, if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by statute, rules, or otherwise with respect to the performance of his duties, or if any complaint is made to the court by any creditor or contributory or by the Minister in regard thereto, the court shall inquire into the matter, and take such action thereon as it thinks expedient.

Liquidator
to answer
inquiries, &c
Ibid. s. 196
(2) (3).

236. (1) The court may at any time require any liquidator of a company which is being wound up by the court to answer any inquiry in relation to any winding up in which he is engaged, and may examine him or any other person on oath concerning the winding up.

(2) The court may also direct a local investigation to be made of the books and vouchers of the liquidator.

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Release of

liquidators.

19 and 20

Geo. V., c.

23, s. 197.

237. (1) When the liquidator of a company which is being wound up by the court has realised all the property of the company, or so much thereof as can, in his opinion, be realised without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the court shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the court, shall take into consideration the report, and any objection which is urged by any creditor or contributory, or person interested, or by the Minister, against the release of the liquidator, and shall either grant or withhold the release accordingly.

(2) Where the release of a liquidator is withheld, the court may, on the application of any creditor or contributory, or person interested or of the Minister, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

(3) An order of the court releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

238. When a winding-up order has been made by the court, it shall be the business of the separate meetings of creditors and contributories summoned pursuant to section two hundred and twenty-six to determine whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator and who are to be members of the committee if appointed.

Meetings of
creditors and
contributories
to determine
whether com-
mittee of
inspection
shall be
appointed.

Ibid. s. 198.

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 Constitution
 and
 proceedings
 of committee
 of
 inspection.
 19 and 20
 Geo. V, c.
 23, s. 199.

239. (1) A committee of inspection appointed in pursuance of this Act shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories or special powers from creditors or contributories authorizing the attorney to act on such a committee in such proportions as are agreed on by the meetings of creditors and contributories, or as, in case of difference, are determined by the court.

(2) The committee shall meet at such times as they from time to time appoint, and, failing such appointment, at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present.

(4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of contributories, if he represents contributories, of which seven days' notice has been given, stating the object of the meeting.

(7) On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy.

(8) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

240. Where there is no committee of inspection, the court may, on the application of the liquidator, do any act or thing, or give any direction or permission which is by this Act authorised or required to be done or given by the committee.

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Powers of court where no committee of inspection.
19 and 20 Geo. V, c. 23, s. 200.

241. (1) The court may at any time after an order for winding up, on the application either of the liquidator, or any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

Power to stay winding up.
19 and 20 Geo. V, c. 23, s. 202.
cf. 1899, No. 40, s. 97.

(2) On any application under this section the court may, before making an order, require the liquidator to furnish to the court a report with respect to any facts or matters which are in his opinion relevant to the application.

242. (1) As soon as may be after making a winding-up order, the court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected and applied in discharge of its liabilities:

Settlement of list of contributories and application of assets.
19 and 20 Geo. V, c. 23, s. 203.
1899, No. 40, s. 107.

Provided that, where it appears to the court that it will not be necessary to make calls on or adjust the rights of contributories, the court may dispense with the settlement of a list of contributories.

(2) In settling the list of contributories, the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

243. The court may, at any time after making a winding-up order, require any contributory for the time being on the list of contributories, and any trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the court directs, to the liquidator any money, property, or books and papers in his hands to which the company is *prima facie* entitled.

Delivery of property to liquidator.
19 and 20 Geo. V, c. 23, s. 204.
1899, No. 40, s. 109.

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Payment of
debts due by
contributory to
company and
extent to
which set-off
allowed.

19 and 20
Geo. V, c. 23,
s. 205.
1899, No.
40, s. 110.

244. (1) The court may, at any time after making a winding-up order, make an order on any contributory for the time being on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(2) The court in making such an order may—

- (a) in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and
- (b) in the case of a limited company, make to any director or managing director whose liability is unlimited or to his estate the like allowance.

(3) In the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

Power of
court to
make calls.

19 and 20
Geo V, c.
23, s. 206.
1899, No. 40,
s. 111.

245. (1) The court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding up and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made.

(2) In making a call the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

246. (1) The court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into a bank or any branch thereof named in the order to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

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Payment into
bank of moneys
due to
company.

19 and 20
Geo. V, c. 23,
s. 207.

1899, No.
40, s. 112.

(2) All moneys and securities paid or delivered into a bank or any branch thereof in the event of a winding up by the court shall be subject in all respects to the orders of the court.

247. (1) An order made by the court on a contributory shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

Order on
contributory
conclusive
evidence.

19 and 20
Geo. V, c. 23,
s. 208.

1899, No.
40, s. 115.

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings.

248. (1) The liquidator of a company, whether provisional or otherwise, may, if satisfied that the nature of the state or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the court, and the court may on such application appoint a special manager of the estate or business to act during such time as the court directs, with such powers, including any of the powers of a receiver or manager, as are entrusted to him by the court.

Appointment of
special
manager.

19 and 20
Geo. V, c.
23, s. 209.

(2) The special manager shall give such security and account in such manner as the court directs.

(3) The special manager shall receive such remuneration as is fixed by the court.

(4) The special manager may at any time resign by notice in writing addressed to the liquidator, or may on cause shown be removed by the court.

249. The court may fix a date on or before which creditors are to prove their debts or claims, and after which they shall be excluded from the benefit of any distribution made before those debts are proved.

Power to
exclude
creditors not
proving in
time.

Ibid. s. 210.
1899, No.
40, s. 116.

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Adjustment of rights of contributories.

19 and 20 Geo. V, c. 23, s. 211.

1899, No. 40, s. 117.

Inspection of books by creditors and contributories.

19 and 20 Geo. V, c. 23, s. 212.

1899, No. 40, s. 155.

Power to order costs of winding up to be paid out of assets.

19 and 20 Geo. V, c. 23, s. 213.

1899, No. 40, s. 118.

Power to summon persons suspected of having property of company.

19 and 20 Geo. V, c. 23, s. 214.

1899, No. 40, ss. 123, 124.

250. The court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto.

251. The court may, at any time after making a winding-up order, make such order for inspection of the books and papers of the company by creditors and contributories as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

252. The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges, and expenses incurred in the winding up in such order of priority as the court thinks just.

253. (1) The court may, at any time after the appointment of a provisional liquidator or the making of a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the promotion, formation, trade, dealings, affairs, or property of the company.

(2) The court may examine him on oath concerning those matters, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The court may require him to produce any books and papers in his custody or power relating to the company, but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the court at the time appointed^a not having

a lawful impediment (made known to the court at the time of its sitting, and allowed by it), the court may cause him to be apprehended and brought before the court for examination.

254. (1) Where an order has been made for winding up a company by the court, and the liquidator has made a further report under this Act stating that in his opinion a fraud has been committed or any material fact concealed by any person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the court may, after consideration of the report, direct that that person, director or officer shall attend before the court on a day appointed by the court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as director or officer thereof.

Power to
order
public
examination
of promo-
ters, direc-
tors, etc.
19 and 20
Geo. V, c.
23, s. 216.
cf. 1899, No.
40, s. 124.

(2) The liquidator shall take part in the examination, and for that purpose may, if specially authorised by the court in that behalf, do so by solicitor or counsel.

(3) Any creditor or contributory may also take part in the examination either personally or by solicitor or counsel.

(4) The court may put or allow to be put such questions to the person examined as the court thinks fit.

(5) The person examined shall be examined on oath, and shall answer all such questions as the court puts or allows to be put to him.

(6) A person ordered to be examined under this section shall, at his own cost, before his examination, be furnished with a copy of the liquidator's report, and may at his own cost employ a solicitor with or without counsel, who shall be at liberty to put to him such questions as the court deems just for the purpose of enabling him to explain or qualify any answers given by him:

Provided that, if any such person applies to the court to be exculpated from any charges made or suggested against him, the liquidator shall appear on the hearing of

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of the application, and call the attention of the court to any matters which appear to the liquidator to be relevant, and if the court, after hearing any evidence given or witnesses called by the liquidator, grants the application, the court may allow the applicant such costs as in its discretion it thinks fit.

(7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter, unless the court otherwise orders, be used in evidence against him, and be open to the inspection of any creditor or contributory at all reasonable times.

(8) The court may, if it thinks fit, adjourn the examination from time to time.

(9) On the hearing of any such application the liquidator may himself give evidence or call witnesses.

(10) An examination under this section may, if the court so directs, and subject to general rules, be held before the Master in Equity or other officer of the court, and the powers of the court under this section may be exercised by the person before whom the examination is held.

Power to restrain fraudulent persons from managing companies.
19 and 20 Geo. V, c. 23, s. 217.

255. (1) Where an order has been made for winding up a company by the court, and the liquidator has made a further report under this Act stating that, in his opinion, a fraud has been committed or any material fact concealed by a person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the court may, on the application of the liquidator, order that that person, director or officer shall not, without the leave of the court, be a director of or in any way, whether directly or indirectly, be concerned in or take part in the management of a company for such period, not exceeding five years, from the date of the report as is specified in the order.

(2) The liquidator shall, where he intends to make an application under subsection one of this section, give not less than ten days' notice of his intention to the person charged with the fraud or concealment of a material fact, and on the hearing of the application that person may appear and himself give evidence or call witnesses.

(3)

(3) The liquidator shall appear on the hearing of an application by him for an order under this section and on an application for leave under this section, and shall call the attention of the court to any matters which appear to him to be relevant, and on any such application the liquidator may himself give evidence or call witnesses.

(4) If any person acts in contravention of an order made under this section, he shall be guilty of an offence.

Penalty: On conviction on indictment, imprisonment for two years; and on summary conviction, five hundred pounds or imprisonment for six months or both.

(5) The provisions of this section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made.

256. The court, at any time either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to quit the State, or otherwise to abscond, or to remove or conceal any of his property for the purpose of evading payment of calls, or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested, and his books and papers and moveable personal property to be seized, and him and them to be safely kept until such time as the court orders.

257. (1) Any powers by this Act conferred on the court shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

(2) Provision may be made by general rules for enabling or requiring all or any of the powers and duties conferred and imposed on the court by this Act in respect of—

- (a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;
- (b) the settling of lists of contributories and the rectifying of the register of members where required, and the collecting and applying of the assets;

Power to arrest absconding contributory.
19 and 20 Geo. V, c. 23, s. 218.
1899, No. 40, s. 125.

Powers of court cumulative.
19 and 20 Geo. V, c. 23, s. 219.
1899, No. 40, s. 126.

Delegation to liquidator of certain powers of court.
19 and 20 Geo. V, c. 23, s. 220.
cf. 1899, No. 40, s. 105.

(c)

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- (c) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;
- (d) the making of calls and the adjusting of the rights of contributories; and
- (e) the fixing of a time within which debts and claims must be proved,

to be exercised or performed by the liquidator as an officer of the court, and subject to the control of the court:

Provided that the liquidator shall not, without the special leave of the court, rectify the register of members, and shall not make any call without either the special leave of the court or the sanction of the committee of inspection.

Winding up
may be
referred to
district
court.
1899, No. 40,
s. 266.

258. (1) When the court makes an order for winding-up a company under this Act it may, if it thinks fit, direct all subsequent proceedings to be had in a district court, and thereupon such district court shall, for the purpose of winding-up the company, be deemed to be the court within the meaning of this Act, and shall have for the purpose of such winding-up all the jurisdiction and powers of the court.

As to transfer
of liquidation
from one
district
court to
another.
Ibid. s. 267.

(2) If, during the progress of such winding-up, it is made to appear to the court that the same could be more conveniently prosecuted in any other district court, it shall be competent for the court to transfer the same to such other district court, and thereupon the winding-up shall proceed in such other district court.

Parties
aggrieved
may appeal.
Ibid. s. 268.

(3) (a) If any party in a winding-up is dissatisfied with a determination or direction of a district court judge on any matter in such winding-up, such party may appeal from the same to the court.

(b) Such party shall, within thirty days after such determination or direction, give notice of such appeal to the other party or his attorney, and also deposit with the registrar of the district court the sum of ten pounds as security for the costs of the appeal, and the court may make such final or other decree or order as it thinks fit, and may also make such order with respect to the costs of the said appeal as the court may think proper, and such orders shall be final.

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(4) The district court judges shall frame the rules and orders for regulating the practice of the district court under this Act and forms of proceedings therein; and such rules, orders, and forms certified under the hands of such judges, or of any three or more of them, shall be submitted to the Chief Judge in Equity, who may allow or disallow or alter the same; and the rules, orders, and forms, so allowed or altered, shall, from a day to be named by the Chief Judge in Equity, be in force in every district court.

Powers of
district
court judges
to frame
rules and
orders.

1899, No. 40,
s. 269.

(5) The district court judges mentioned in subsection four of this section shall be empowered to frame a scale of costs and charges to be paid to counsel and attorneys with respect to all proceedings in district courts in a winding-up under this Act, and such scale, certified under the hands of such judges, or any three or more of them, shall be submitted to the Chief Judge in Equity, who, from time to time, may allow, disallow, or alter the same, and the scale, so allowed or altered, shall from a day to be named by the Chief Judge in Equity be in force in every district court.

Scale of
costs to be
framed by
the judges.

Ibid. s. 270.

(6) The district court judges, with the consent of the Chief Judge in Equity may, by an order, direct that after the date named in the order, any registrar or bailiff shall be paid as remuneration for the duties performed by him under this Part of this Act such fixed or fluctuating allowance as may in each case be thought just.

Remuneration
of registrars
and bailiffs of
district courts
in winding-up
of companies.

Ibid. s. 271.

259. (1) As soon as the affairs of the company are fully wound up, it shall be the duty of the liquidator to apply to the court for an order that the company be dissolved, and from the date of the order the company shall be dissolved accordingly.

Dissolution
of company.

19 and 20

Geo. V, c.

23, s. 221.

Penalty: Ten pounds.

(2) The order shall within fourteen days from the date thereof be filed by the liquidator with the Registrar-General, who shall make in his books a minute of the dissolution of the company.

cf. 1899,

No. 40, ss.

119-121.

If the liquidator makes default in complying with the requirements of this subsection, he shall be guilty of an offence.

Penalty: Five pounds for every day during which he is in default.

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Notice of
resolution
to wind up
voluntarily.
19 and 20
Geo. V, c.
23, s. 225.
1899, No.
40, s. 130.

DIVISION 3.—*Voluntary winding up.*

260. (1) A company may be wound up voluntarily—

- (a) when the period, if any, fixed for the duration of the company by the articles expires, or the event, if any, occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily;
- (b) if the company resolves by special resolution that the company be wound up voluntarily; or
- (c) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

(2) In this Act “a resolution for voluntary winding up” means a resolution passed under any of the provisions of subsection one of this section.

Notice of
resolution
to wind up
voluntarily.
19 and 20
Geo. V, c. 23.
s. 226.
1899, No.
40, c. 188.

261. (1) When a company has passed a resolution for voluntary winding up, it shall, within fourteen days after the passing of the resolution, give notice of the resolution by advertisement in the Gazette.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence, and for the purposes of this subsection the liquidator of the company shall be deemed to be an officer of the company.

Commencement
of voluntary
winding up.
19 and 20
Geo. V, c.
23, s. 227.
1899, No. 40,
c. 181.

262. A voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntary winding up.

Effect of
voluntary
winding up
on business
and status
of company.
19 and 20
Geo. V, c.
23, s. 228.
1899, No. 40,
c. 182.

263. In case of a voluntary winding up, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as is required for the beneficial winding up thereof:

Provided

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Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

264. Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of a voluntary winding up, shall be void.

Avoidance of transfers, etc., after commencement of voluntary winding up.
19 and 20 Geo. V, c. 23, s. 229.
cf. 1899, No. 40, s. 132.

265. (1) Where it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than two directors, the majority of the directors may, at a meeting of the directors held before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out, make a statutory declaration to the effect that they have made a full inquiry into the affairs of the company, and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within a period, not exceeding twelve months, from the commencement of the winding up.

Statutory declaration of solvency in case of proposal to wind up voluntarily.
19 and 20 Geo. V, c. 23, s. 230.

(2) A declaration so made shall have no effect for the purposes of this Act unless it is filed with the Registrar-General for registration before the date mentioned in subsection one of this section.

(3) A winding up in the case of which a declaration has been made and filed in accordance with this section is in this Act referred to as "a members' voluntary winding up," and a winding up in the case of which a declaration has not so been made and filed is in this Act referred to as "a creditors' voluntary winding up."

266. The provisions contained in sections two hundred and sixty-seven to two hundred and seventy-one, both inclusive, of this Act, shall apply in relation to a members' voluntary winding up.

Provisions applicable to a members' winding up.
Ibid.

267. (1) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.

Power of company to appoint and fix remuneration of liquidators.
Ibid. s. 232.

(2)

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(2) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof.

Power to fill
vacancy in
office of
liquidator.
19 and 20
Geo. V, c. 23,
s. 233.
1899, No.
40, s. 139.

268. (1) If a vacancy occurs by death, resignation, or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy by the appointment of a liquidator or liquidators, and may fix the remuneration to be paid to him or them.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner provided by this Act or by the articles, or in such manner as is, on application by any contributory or by the continuing liquidators, determined by the court.

Power of
liquidator
to accept
shares, etc.,
as considera-
tion for sale
of property
of company.
19 and 20
Geo. V, c.
23, s. 234.
1899, No. 40,
ss. 261, 262.

269. (1) Where a company is proposed to be, or is in course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Act or not (in this section called "the transferee company") the liquidator of the first-mentioned company (in this section called "the transferor company") may, with the sanction of a special resolution of that company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transfer or sale, shares, debentures, policies, or other like interests in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, debentures, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

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(3) If any member of the transferor company who did not vote in favour of the special resolution expresses his dissent therefrom in writing addressed to the liquidator and left at the registered office of the company within fourteen days after the passing of the resolution he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration in accordance with the provisions of this section.

(4) If the liquidator elects to purchase the member's interest, the purchase money shall, if fixed by arbitration but subject to any express provision in the award, be payable forthwith after the making of the award, and in any case shall be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but, if an order is made within a year for winding up the company by or subject to the supervision of the court, the special resolution shall not be valid unless sanctioned by the court.

(6) For the purposes of an arbitration under this section the provisions of the Arbitration Act, 1902, and any law amending or in substitution for that Act shall be incorporated with this Act, and shall apply as if there were a submission for reference to two arbitrators, one to be appointed by each party. The appointment of an arbitrator may be made under the hand of the liquidator, or, if there is more than one liquidator, then under the hands of any two or more of the liquidators.

270. (1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as is convenient, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year. (2)

Duty of
liquidator to
call general
meeting at
end of each
year.
19 and 20
Geo. V, c.
23, s. 235.

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(2) If the liquidator fails to comply with this section, he shall be guilty of an offence.

Penalty: Ten pounds.

Final meeting and dissolution.
19 and 20 Geo. V, c. 23, s. 236. 1899, No. 40, ss. 141, 142.

271. (1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

(2) The meeting shall be called by advertisement published in the Gazette and once at least in a newspaper circulating in the district where the registered office or the principal place of business of the company is situate specifying the time, place and object thereof, and published at least one month before the meeting.

(3) Within one week after the meeting, the liquidator shall file with the Registrar-General a copy of the account, and a return of the holding of the meeting and of its date;

Provided that, if a quorum is not present at the meeting, the liquidator shall, in lieu of the return of the holding of the meeting and of its date, file a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being filed the provisions of this subsection as to the filing of the return shall be deemed to have been complied with.

(4) If such copy or return is not filed in accordance with subsection three of this section the liquidator shall be guilty of an offence.

Penalty: Five pounds for every day during which the default continues.

(5) On the expiration of three months from the filing of the account and the return the company shall be deemed to be dissolved:

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

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(6) The person on whose application an order of the court under this section is made shall, within fourteen days after the making of the order, file with the Registrar-General an office copy of the order for registration, and if that person fails so to do he shall be guilty of an offence.

Penalty: Five pounds for every day during which the default continues.

272. The provisions contained in sections two hundred and seventy-three to two hundred and eighty, both inclusive, of this Act shall apply in relation to a creditors' voluntary winding up.

Provisions applicable to a creditors' winding up.
19 and 20 Geo. V, c. 28, s. 237.

273. (1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company.

Meeting of creditors.
Ibid. s. 238.

(2) The company shall cause notice of the meeting of the creditors to be advertised once in the Gazette and once at least in a newspaper circulating in the district where the registered office or principal place of business of the company is situate.

(3) The directors of the company shall—

(a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of creditors to be held in accordance with this section; and

(b) appoint one of their number to preside at the meeting.

(4) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.

(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors

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creditors held in pursuance of subsection one of this section shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.

(6) If default is made—

- (a) by the company in complying with subsection one or with subsection two of this section;
- (b) by the directors of the company in complying with subsection three of this section; or
- (c) by any director of the company in complying with subsection four of this section;

the company, directors or director, as the case may be, and, in the case of default by the company, every officer of the company who is in default, shall be guilty of an offence.

Penalty: One hundred pounds.

Appoint-
ment of
liquidator.
19 and 20
Geo. V, c.
23, s. 239.

274. The creditors and the company at their respective meetings mentioned in section two hundred and seventy-three may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and the person so nominated shall be liquidator.

If the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person, if any, nominated by the company shall be liquidator:

Provided that in the case of different persons being nominated any director, member, or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing some other person to be liquidator instead of the person appointed by the creditors.

275. (1) The creditors at the meeting to be held in pursuance of section two hundred and seventy-three of this Act or at any subsequent meeting, may, if they think fit, appoint a committee of inspection consisting of not more than five persons, and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit not exceeding five in number to act as members of the committee:

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection, and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the court otherwise directs, be qualified to act as members of the committee, and on any application to the court under this provision the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(2) Subject to the provisions of this section and to the general rules, the provisions of section two hundred and thirty-nine (except subsection one) of this Act shall apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding up by the court.

276. (1) The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

Liquidator's remuneration and cesser of directors' powers.
Ibid. s. 241.

(2) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors, sanction the continuance thereof.

277. If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by, or by the direction of, the court, the creditors may fill the vacancy by the appointment of a liquidator or liquidators.

Power to fill vacancy in office of liquidator.
Ibid. s. 242.

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Application of
s. 269 to a
creditors'
voluntary
winding up.
19 and 20 Geo.
V, c. 23, s. 243.

Duty of
liquidator to
call meetings
of company
and of
creditors at
end of each
year.
Ibid. s. 244.

278. The provisions of section two hundred and sixty-nine of this Act shall apply in the case of a creditors' voluntary winding up as in the case of a members' voluntary winding up, with the modification that the powers of the liquidator under that section shall not be exercised except with the sanction either of the court or of the committee of inspection.

279. (1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company and a meeting of creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as is convenient, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with this section, he shall be guilty of an offence.

Penalty: Ten pounds.

Final meet-
ing and
dissolution.
Ibid. s. 245.

280. (1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors, for the purpose of laying the account before the meetings and giving any explanation thereof.

(2) Each such meeting shall be called by advertisement published in the Gazette and once at least in a newspaper circulating in the district where the registered office or the principal place of business of the company is situate specifying the time, place, and object thereof, and published at least one month before the meeting.

(3) Within one week after the date of the meetings, or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall file with the Registrar-General a copy of the account, and a return of the holding of the meetings and of their dates:

Provided that, if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return of the holding of the meeting and of its date file a return that

that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being filed the provisions of this subsection as to the filing of the return shall, in respect of that meeting, be deemed to have been complied with.

(4) If such copy or return is not filed in accordance with subsection three of this section the liquidator shall be guilty of an offence.

Penalty: Five pounds for every day during which the default continues.

(5) On the expiration of three months from the filing with the Registrar-General of the account and the return the company shall be deemed to be dissolved:

Provided that the court may, on the application of the liquidator or of any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(6) The person on whose application an order of the court under this section is made shall, within fourteen days after the making of the order, file with the Registrar-General an office copy of the order for registration, and if that person fails so to do he shall be guilty of an offence.

Penalty: Five pounds for every day during which the default continues.

281. The provisions contained in sections two hundred and eighty-two to two hundred and eighty-eight, both inclusive, of this Act shall apply to every voluntary winding up whether a members' or a creditors' winding up.

Provisions applicable to every voluntary winding up.
19 and 20 Geo. V, c. 23, s. 246.

282. Subject to the provisions of this Act as to preferential payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities pari passu, and, subject to that application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

Distribution of property of company.
Ibid. a. 247.

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Powers and
duties of
liquidator in
voluntary
winding up.
19 and 20
Geo. V, c.
23, s. 248.

283. (1) The liquidator may—

- (a) in the case of a members' voluntary winding up, with the sanction of an extraordinary resolution of the company, and, in the case of a creditors' voluntary winding up, with the sanction of either the court or the committee of inspection, exercise any of the powers given by paragraphs (c), (d) and (e) of subsection one of section two hundred and thirty-one of this Act to a liquidator in a winding up by the court;
- (b) without sanction, exercise any of the other powers by this Act given to the liquidator in a winding up by the court;
- (c) exercise the power of the court under this Act of settling a list of contributories, and the list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories;
- (d) exercise the power of the court of making calls; and
- (e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution or for any other purpose he thinks fit.

(2) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(3) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as is determined at the time of their appointment, or, in default of any such determination, by any number not less than two.

Power of court
to appoint and
remove
liquidator in
voluntary
winding up.
Ibid. s. 249.

284. (1) If from any cause whatever there is no liquidator acting, the court may appoint a liquidator.

(2) The court may, on cause shown, remove a liquidator and appoint another liquidator.

285.

285. (1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors.

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Arrange-
ment when
binding on
creditors.
19 & 20 Geo.
V, c. 23,
s. 251.
1899, No. 40,
s. 159.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the court against it, and the court may thereupon, as it thinks just, amend, vary, or confirm the arrangement.

286. (1) The liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls, or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.

Power to apply
to court to
have questions
determined or
powers
exercised.
19 and 20
Geo. V, c. 23,
s. 252.
1899, No. 40,
s. 137.

(2) The court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

287. (1) All costs, charges, and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

Costs of
voluntary
winding up.
19 and 20
Geo. V, c. 23,
s. 254.
1899, No. 40,
s. 143.

(2) The costs, charges and expenses of winding up shall include the costs and fees of any solicitor and the fees of any auditor retained by the company for services rendered for the company preparatory to, in the course of, and incidental to the winding up of the company.

S.A., No.
2196, s. 270
(2).

288. The voluntary winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the court, but in the case of an application by a contributory, the court shall be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

Saving for
rights of
creditors and
contributories.
19 and 20
Geo. V, c. 23,
s. 255.
1899, No. 40,
s. 144.

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Power to order winding up subject to supervision.
 19 and 20 Geo. V, c. 28, s. 256.
 1899, No. 40, s. 146.

Effect of petition for winding up subject to supervision.
 19 and 20 Geo. V, c. 28, s. 257.
 1899, No. 40, s. 147.

Application of ss. 213 and 214 to winding up subject to supervision.
 19 and 20 Geo. V, c. 28, s. 258.

Power of court to appoint or remove liquidators.
Ibid. s. 259.
 1899, No. 40, s. 149.
 S.A. No. 2196, s. 275 (1).

DIVISION 4.—Winding up subject to supervision of court.

289. When a company has passed a resolution for voluntary winding up, the court may make an order that the voluntary winding up shall continue but subject to such supervision of the court, and with such liberty for creditors, contributories, or others to apply to the court, and generally on such terms and conditions as the court thinks just.

290. A petition for the continuance of a voluntary winding up subject to the supervision of the court shall, for the purpose of giving jurisdiction to the court over actions, be deemed to be a petition for winding up by the court.

291. A winding up subject to the supervision of the court shall, for the purposes of sections two hundred and thirteen and two hundred and fourteen of this Act, be deemed to be a winding up by the court.

292. (1) Where an order is made for a winding up subject to supervision, the court may by that or any subsequent order remove any liquidator appointed on the voluntary winding up or appoint any new or additional liquidator.

(2) A liquidator appointed by the court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position, as if he had been duly appointed in accordance with the provisions of this Act with respect to the appointment of liquidators in a voluntary winding up.

(3) The court may remove any liquidator so appointed by the court or any liquidator continued under the supervision order and fill any vacancy occasioned by the removal, or by death or resignation.

Effect of supervision order.
 19 and 20 Geo. V, c. 28, s. 260.
 1899, No. 40, s. 150.

293. (1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the court, exercise all his powers, without the sanction or intervention of the court, in the same manner as if the company were being wound up altogether voluntarily:

Provided

Provided that the powers specified in paragraphs (c), (d) and (e) of subsection one of section two hundred and thirty-one of this Act shall not be exercised by the liquidator except with the sanction of the court or, in a case where before the order the winding up was a creditors' voluntary winding up, with the sanction of either the court or the committee of inspection.

(2) A winding up subject to the supervision of the court shall not be deemed to be a winding up by the court for the purpose of the provisions of this Act which are set out in Schedule Ten to this Act, but, otherwise, ~~Schedule Ten.~~ an order for a winding up subject to supervision shall for all purposes be deemed to be an order for winding up by the court:

Provided that where the order for winding up subject to supervision is made in relation to a creditor's voluntary winding up in which a committee of inspection has been appointed, the order shall be deemed to be an order for winding up by the court for the purpose of section two hundred and thirty-nine (except subsection one thereof) of this Act, except in so far as the operation of that section is excluded in a voluntary winding up by general rules.

DIVISION 5.—Provisions applicable to every mode of winding up.

294. (1) Every liquidator shall, within twenty-one days after his appointment, file with the Registrar-General for registration a notice of his appointment in the form prescribed.

(2) The notice shall state the situation of his office, and notice of any change thereof shall be given by him within twenty-one days of the change.

Service made at such address shall be deemed good service on him and on the company.

(3) If the liquidator fails to comply with the requirements of this section he shall be guilty of an offence.

Penalty: Five pounds for every day during which the default continues.

No. 89, 1936.**Debts of all descriptions to be proved.**19 and 20
Geo. V, c.
23, s. 261.1899, No. 40,
s. 157.

295. In every winding up (subject in the case of insolvent companies to the application in accordance with the provisions of this Act of the law of bankruptcy) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as are subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

Application of bankruptcy rules in winding up of insolvent companies.19 and 20
Geo. V, c.
23, s. 262.1899, No. 40,
s. 264.

296. In the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy with respect to the estates of persons against whom sequestration orders are made, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up, and make such claims against the company as they respectively are entitled to by virtue of this section.

Priorities.cf. 19 & 20
Geo. V, c.

23, s. 264.

297. (1) Subject to the provisions of this Act, in a winding up there shall be paid in priority to all other debts—

- (a) the costs and expenses of the winding up, including the remuneration of the liquidator and the costs of the audit pursuant to section three hundred and sixteen of this Act;
- (b) all wages or salary (whether or not earned wholly or in part by way of commission not being an overriding commission) of any clerk, commercial traveller, servant, labourer or workman, not exceeding fifty pounds, whether payable for time or piece work, in respect of services rendered to the company within four months before the relevant date;
- (c) all amounts not exceeding in any individual case two hundred pounds due in respect of compensation

compensation under the Workers' Compensation Act, 1926-1929, or any Act replaced by that Act accrued before the relevant date:

Provided that where the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or where the company has entered into a contract with insurers in respect of any liability under any such Act to any worker, this paragraph shall not apply;

- (d) all land tax and income tax assessed or to be assessed under any Act or Commonwealth Act due from the company at the relevant date and having become due or to become due and payable within twelve months next preceding that date, or to become due and payable thereafter and not exceeding in the whole one year's assessment;
- (e) so much rent reckoned from day to day, for a period not exceeding three months, as was due and payable to the landlord of the company **at** the relevant date:

Provided that no payment shall be made under this paragraph in excess of the value of the goods on the premises, such value to be fixed by the court in a summary manner in the event of the liquidator and landlord not agreeing as to the amount.

(2) Where any compensation under the Workers' Compensation Act, 1926-1929, or any Act replaced by that Act, is a weekly payment, the amount due in respect thereof shall, for the purposes of paragraph (c) of subsection one of this section, be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under any such Act.

(3) Where any payment on account of wages or salary has been made to any clerk, commercial traveller, servant, labourer or workman in the employment of a company out of money advanced by some person for that purpose, that person shall in a winding up have a right of priority equal to that of the clerk, commercial traveller, **servant,**

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servant, labourer or workman in respect of the money so advanced and paid up to the amount by which the sum in respect of which that clerk, commercial traveller, servant, labourer or workman would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

This subsection shall extend to a payment by a receiver pursuant to section one hundred and seventy-three.

(4) After provision is made for the costs and expenses referred to in paragraph (a) of subsection one of this section the debts referred to in the remaining paragraphs of that subsection shall rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.

Where and so far as the assets of the company available for payment of general creditors are insufficient to meet debts referred to in paragraph (b) of subsection one of this section, such debts shall have priority over the claims of holders of debentures under any floating charge created by the company after the commencement of this Act, and be paid accordingly out of any property comprised in or subject to that charge.

**51. 20 and 21
Geo. V, c. 25,
s. 1.**

(5) (a) Where the company is, under a contract of insurance, insured against liabilities to third parties, then in the event of any such liability being incurred by the insured (either before or after the commencement of the winding up) the amount of the liability so incurred shall upon being received by the liquidator be held by him in trust and be paid by him to the third party to whom such liability was incurred to the extent necessary to discharge any liability remaining undischarged.

(b) If the liability of the insurer to the insured is less than the liability of the insured to the third party, nothing in this subsection shall limit the rights of the third party in respect of the balance.

(c) The provisions of this subsection shall take effect notwithstanding any agreement to the contrary entered into after the commencement of this Act.

(6) Where a debt has been proved which includes interest or any pecuniary consideration in lieu of interest, or any claim founded on a claim for interest, the interest

interest consideration or claim shall, for the purposes of dividend, be calculated at a rate not exceeding eight pounds per centum per annum, without prejudice to the right of a creditor to receive out of the assets any higher rate of interest to which he may be entitled after all the debts proved in the winding up have been paid in full.

(7) Where in any winding up, assets have been recovered by means of an indemnity for costs of litigation given by certain creditors, the court may make such order as it deems just with respect to the distribution of those assets with a view to giving the indemnifying creditors an advantage over others in consideration of the risk run by them in giving the indemnity.

(8) In this section "the relevant date" means—

- (a) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding-up order; and
- (b) in any other case, the date of the commencement of the winding up.

298. (1) Any such conveyance, mortgage, delivery of goods, payment, execution or other act relating to property as would, according to the law of bankruptcy for the time being in force, if made or done by or against any individual be void or voidable in the event of his bankruptcy, shall, if made or done by or against a company, be deemed in the event of such company being wound-up under this Act, to be void or voidable in like manner.

(2) For the purposes of this section, the commencement of the winding up shall be deemed to correspond with the presentation of the bankruptcy petition in the case of an individual.

(3) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents.

299. Where a company is being wound up the court may on the application of the liquidator by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official

Preferences.
cf. 19 & 20
Geo. V, c. 23,
s. 265.
1899, No. 40,
s. 263.

19 & 20
Geo. V,
c. 23, s. 190.

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official name, and thereupon the property to which the order relates shall vest accordingly, and the liquidator may, after giving such indemnity, if any, as the court directs, bring or defend in his official name any action or other legal proceeding which relates to that property, or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

The order so far as regards land shall not take effect until it is registered in the office of the Registrar-General in the manner and on payment of the fees prescribed by regulations under the Conveyancing Act, 1919-1932, nor in the case of land subject to the provisions of the Real Property Act, 1900, until the Registrar-General has made in the register book under that Act all such entries as are necessary to give effect to the order.

**Disclaimer
of onerous
property.**

19 & 20 Geo.
V, c. 23
• 207.

300. (1) Where any part of the property of a company which is being wound up consists of—

- (a) land of any tenure burdened with onerous covenants; **or**
- (b) shares or stock in companies; **or**
- (c) unprofitable contracts; **or**
- (d) any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, **or** to the payment of any sum of money,

the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, may, with the leave of the court and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as is allowed by the court, disclaim the property:

Provided that, where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power under this section of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as is allowed by the court.

(2)

(2) The disclaimer shall operate to determine as from the date of disclaimer, the rights, interest, and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The court, before or on granting leave to disclaim may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the court thinks just.

(4) The liquidator shall not be entitled to disclaim any property under this section in any case where an application in writing has been made to him by any persons interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of twenty-eight days after the receipt of the application or such further period as is allowed by the court, given notice to the applicant that he intends to apply to the court for leave to disclaim, and, in the case of a contract, if the liquidator after such an application in writing as aforesaid does not within the said period or further period disclaim the contract, he shall not thereafter be entitled to do so.

(5) The court may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the court thinks just, and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

(6) The court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing any such persons as it thinks fit make an order for the vesting of the property in or the delivery of the property to

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to any persons entitled thereto, or to whom it seems just that the property should be delivered by way of compensation for that liability, or a trustee for him, and on such terms as the court thinks just, and on any such vesting order being made and being registered in the office of the Registrar-General in the manner and subject to the payment of the fees prescribed by regulations made under the Conveyancing Act, 1919-1932, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose.

Where the property is land subject to the provisions of the Real Property Act, 1900, it shall not vest until the Registrar-General makes all such entries in the register book under that Act as are necessary:

Provided that, where the property disclaimed is of a leasehold nature, the court shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee, except upon the terms of making that person—

- (a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or
- (b) if the court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date;

and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon those terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon those terms, the court may vest the estate and interest of the company in the property in any person liable either personally or in a representative character, and either alone or jointly with the company to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the company.

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(7) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up.

301. (1) Where a creditor has issued execution against the goods or land of a company or has attached any debt due to the company, and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding up of the company unless he has completed the execution or attachment before the commencement of the winding up:

Provided that—

(a) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor so had notice shall for the purposes of the foregoing provision be substituted for the date of the commencement of the winding up; and

(b) a person who purchases in good faith under a sale by the sheriff any goods of a company on which an execution has been levied shall in all cases acquire a good title to them against the liquidator.

(2) For the purposes of this Act—

(a) an execution against goods is completed by seizure and sale;

(b) an execution against land is completed by sale, or, in the case of an equitable interest, by sale or by the appointment of a receiver; and

(c) an attachment of a debt is completed by receipt of the debt.

302. (1) Where any goods of a company are taken in execution, and, before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the sheriff that a provisional liquidator has been appointed or that a winding-up order has been made or that a resolution for

Duties of sheriff as to goods taken in execution.
19 and 20 Geo. V. c. 23, s. 269.

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for voluntary winding up has been passed, the sheriff shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge.

(2) Where under an execution in respect of a judgment for a sum exceeding twenty pounds the goods of a company are sold or money is paid in order to avoid sale, the sheriff shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for fourteen days, and if within that time notice is served on him of a petition for the winding up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up of the company and an order is made or a resolution is passed, as the case may be, for the winding up of the company, the sheriff shall pay the balance to the liquidator, who shall be entitled to retain it as against the execution creditor.

(3) In this section and in section three hundred and one of this Act—

“ Goods ” includes all chattels personal and any property which may be seized, taken or sold under a writ of fieri facias by virtue of Part III of the Judgment Creditors Remedies Act, 1901, or of any other Act.

“ Sheriff ” includes any officer charged with the execution of a writ or other process.

Offences by
officers of
companies
in
liquidation
19 and 20
Geo. V, c.
23, s. 271.

303. (1) Any person who, being a past or present director, manager, or other officer of a company which at the time of the commission of the alleged offence is being wound up, whether by or under the supervision of the court or voluntarily, or is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up—

(a) does not to the best of his knowledge and belief when required by the liquidator so to do, fully and truly discover to the liquidator all the property, real and personal, of the company, and how and to whom and for what consideration and

and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company;

- (b) does not deliver up to the liquidator, or as he directs, all such part of the real and personal property of the company as is in his custody or under his control, and which he is required by law to deliver up;
- (c) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company which he is required by law to deliver up;
- (d) within twelve months immediately before the commencement of the winding up or at any time thereafter conceals any part of the property of the company to the value of ten pounds or upwards, or conceals any debt due to or from the company;
- (e) within twelve months immediately before the commencement of the winding up or at any time thereafter fraudulently removes any part of the property of the company to the value of ten pounds or upwards;
- (f) makes any material omission in any statement relating to the affairs of the company;
- (g) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of a month to inform the liquidator thereof;
- (h) after the commencement of the winding up prevents the production of any book or paper affecting or relating to the property or affairs of the company;
- (i) within twelve months immediately before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of, any book or paper affecting or relating to the property or affairs of the company;

(j)

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- (j) within twelve months immediately before the commencement of the winding up or at any time thereafter makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company;
- (k) within twelve months immediately before the commencement of the winding up or at any time thereafter fraudulently parts with, alters, or makes any omission in, or is privy to the fraudulent parting with, altering, or making any omission in, any document affecting or relating to the property or affairs of the company;
- (l) after the commencement of the winding up or at any meeting of the creditors of the company within twelve months immediately before the commencement of the winding up attempts to account for any part of the property of the company by fictitious losses or expenses;
- (m) has within twelve months immediately before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for;
- (n) within twelve months immediately before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for;
- (o) within twelve months immediately before the commencement of the winding up or at any time thereafter pawns, pledges, or disposes of any property of the company which has been obtained on credit and has not been paid for, unless that pawning, pledging, or disposing is in the ordinary way of the business of the company; or

(p)

(p) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up;

shall be guilty of an offence.

Penalty: In the case of the offences mentioned respectively in paragraphs (m), (n) and (o) of this subsection, on conviction on indictment, imprisonment for five years, and on summary conviction, imprisonment for twelve months; and in the case of any other offence, on conviction on indictment, imprisonment for two years, and on summary conviction, imprisonment for twelve months.

(2) It shall be a good defence to a charge under any of paragraphs (a), (b), (c), (d), (f), (n) and (o) of subsection one of this section if the accused proves that he had no intent to defraud, and to a charge under any of paragraphs (h), (i) and (j) of that subsection, if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(3) Where any person pawns, pledges or disposes of any property in circumstances which amount to a contravention of paragraph (o) of subsection one of this section, every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged, or disposed of in those circumstances shall be guilty of an offence, and shall be punishable as if he had received the property knowing it to have been obtained in circumstances amounting to a misdemeanour.

(4) For the purposes of this section, "director" includes any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

304. If any director, manager or other officer, or contributory of any company being wound up destroys, mutilates, alters, or falsifies any books, papers, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or document belonging to the company with intent to defraud or deceive any person, he shall be guilty of an offence.

Penalty for
falsification
of books.
19 and 20
Geo. V, c.
23, s. 272.

Penalty: Imprisonment for two years.

305.

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**Frauds by
officers of
companies
which have
gone into
liquidation.**

19 and 20
Geo. V, c.
23, s. 273.

305. Any person who, being at the time of the commission of the alleged offence a director, manager or other officer of a company which is subsequently ordered to be wound up by the court or subsequently passes a resolution for voluntary winding up—

- (a) has by false pretences or by means of any other fraud induced any person to give credit to the company;
- (b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company; or
- (c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against the company,

shall be guilty of an offence.

Penalty: On conviction on indictment, imprisonment for two years; on summary conviction, imprisonment for twelve months.

**Liability
where proper
accounts
not kept.**
Ibid. s. 274
(1).

306. (1) If where a company is wound up it is shown that proper accounts were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, every director, manager or other officer of the company who was knowingly a party to or connived at the default of the company shall, unless he shows that he acted honestly or that in the circumstances in which the business of the company was carried on the default was excusable, be guilty of an offence.

Penalty: On conviction on indictment, imprisonment for one year; or on summary conviction, imprisonment for six months.

**Proper
accounts.**
Ibid. s. 274
(2).

(2) For the purposes of subsection one of this section, proper accounts shall be deemed not to have been kept in the case of any company if there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade

trade or business of the company, including books or papers containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of the annual stock takings and (except in the case of goods sold by way of ordinary retail trade) of all goods purchased and sold, showing the goods and the sellers and buyers thereof in sufficient detail to enable those goods and those sellers and buyers to be identified.

307. (1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the court, on the application of the liquidator or any creditor or contributory of the company, may, if it thinks proper so to do, declare that any of the directors, whether past or present, of the company who were knowingly parties to the carrying on of the business in that manner shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the court directs.

Responsi-
bility of
directors for
fraudulent
trading.
19 and 20
(Geo. V, c.
23, s. 275)

(2) Where the court makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make provision for making the liability of any such director under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any company or person on his behalf, or any person claiming as assignee from or through the director, company or person, and may from time to time make such further order as is necessary for the purpose of enforcing any charge imposed under this subsection.

For the purpose of this subsection, "assignee" includes any person to whom or in whose favour, by the directions of the director, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration (not including consideration by way

way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in subsection one of this section, every director of the company who was knowingly a party to the carrying on of the business in that manner, shall be guilty of an offence.

Penalty: Imprisonment for one year.

(4) The court may, in the case of any person in respect of whom a declaration has been made under subsection one of this section, or who has been convicted of an offence under subsection three of this section, order that that person shall not, without the leave of the court, be a director of or in any way, whether directly or indirectly, be concerned in or take part in the management of a company for such period, not exceeding five years, from the date of the declaration or of the conviction, as the case may be, as is specified in the order, and any person who acts in contravention of an order made under this subsection shall be guilty of an offence.

Penalty: On conviction on indictment, imprisonment for two years; or on summary conviction, five hundred pounds or imprisonment for six months or both.

(5) In subsection four of this section "the court" in relation to the making of an order, means the court by which the declaration was made or the court before which the person was convicted, as the case may be, and in relation to the granting of leave means the Supreme Court in its equitable jurisdiction.

(6) For the purposes of this section, "director" includes any person in accordance with whose directions or instructions the directors of a company have been accustomed to act.

(7) The provisions of this section shall have effect notwithstanding that the person concerned may be criminally liable apart from this section in respect of the matters on the ground of which the declaration is to be made, and the declaration shall be deemed to be a final judgment.

(8) It shall be the duty of the liquidator to appear on the hearing of an application for leave under subsection four of this section, and on the hearing of an application under that subsection or under subsection one of this section the liquidator may himself give evidence or call witnesses.

308. (1) If in the course of winding up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, or liquidator, or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator, or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance, or breach of trust as the court thinks just.

Power of
court to
assess
damages
against
delinquent
directors,
etc.

19 and 20
Geo. V, c.
23, s. 276.

1899, No. 49,
s. 162.

(2) This section shall extend to and in respect of the receipt of any money or property by any director of the company during the two years preceding the commencement of the winding up, whether by way of salary or otherwise, appearing to the Court to be unfair or unjust to other members of the company.

(3) The provisions of this section shall have effect notwithstanding that the offence is one for which the offender may be criminally liable.

(4) Where an order for payment of money is made under this section, the order shall be deemed to be a final judgment.

309. (1) If it appears to the court in the course of a winding up by, or subject to the supervision of, the court that any past or present director, manager or other officer, or any member, of the company has been guilty of any offence in relation to the company for which he

Prosecution of
delinquent
officers and
members of
company.

19 and 20
Geo. V, c.
23, s. 277.

1899, No. 49
s. 164.

is

No. 33, 1936. is criminally liable, the court may, either on the application of any person interested in the winding up or of its own motion direct the liquidator—

- (a) to prosecute the offender; or
- (b) to refer the matter to the Attorney-General.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present director, manager or other officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter to the Attorney-General and shall furnish to the Attorney-General such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator and relating to the matter in question, as he requires.

(3) Where any report is made under subsection two of this section to the Attorney-General, he may, if he thinks fit, investigate the matter and may if he thinks it expedient, apply to the court for an order conferring on him or any person designated by him for the purpose with respect to the company concerned all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the court.

(4) If on any report to the Attorney-General under subsection two of this section it appears to him that the case is not one in which proceedings ought to be taken by him, he shall inform the liquidator accordingly, and thereupon, subject to the previous sanction of the court, the liquidator may himself take proceedings against the offender.

(5) If it appears to the court in the course of a voluntary winding up that any past or present director, manager or other officer, or any member, of the company, has been guilty of any offence in relation to the company for which he is criminally liable, and that no report with respect to the matter has been made by the liquidator to the Attorney-General under subsection two of this section, the court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being

being made accordingly the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of subsection two of this section.

(6) If, where any matter is reported or referred to the Attorney-General under this section, he considers that the case is one in which a prosecution ought to be instituted, and, further, that it is desirable in the public interest that the proceedings in the prosecution should be conducted by him, he shall institute proceedings accordingly, and it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give him all assistance in connection with the prosecution which he is reasonably able to give.

(7) For the purposes of subsection six of this section, "agent" in relation to a company shall be deemed to include any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(8) If any person fails or neglects to give assistance in manner required by subsection six of this section, the court may, on the application of the Attorney-General, direct that person to comply with the requirements of that subsection, and where any such application is made with respect to a liquidator the court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.

(9) Subject to any direction given pursuant to subsection eight of this section and to any mortgages or charges on the assets of the company and any debts to which priority is given by section two hundred and ninety-seven of this Act, all costs and expenses incurred by the liquidator under this section shall be payable out of those assets as part of the costs of winding up.

310. (1) A body corporate shall not be qualified for appointment as liquidator of a company, whether in a winding up by or under the supervision of the court or in a voluntary winding up, and any appointment made in contravention of this provision shall be void.

Disqualifica-
tion for
appointment
as
liquidator.

19 and 20
Geo. V, c.
23, s. 276.

(2)

No. 38, 1936.

(2) Nothing in this section shall disqualify a body corporate from acting as liquidator of a company if acting under an appointment made before the commencement of this Act, but except in any such case any body corporate which acts as liquidator of a company shall be guilty of an offence.

Penalty: One hundred pounds.

Review of
liquidator's
remunera-
tion.

311. Any member, creditor or the liquidator of a company may apply to the court to review the amount of the remuneration of the liquidator fixed pursuant to section two hundred and sixty-seven to section two hundred and sixty-eight or to section two hundred and seventy-six, and the decision of the court shall be final and conclusive.

Enforcement
of duty of
liquidator
to make
returns, etc.
19 and 20
Geo. V, c.
23, s. 279.

312. (1) If any liquidator, who has made any default in filing, delivering or making any application, return, account or other document or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so, the court may, on an application made to the court by any contributory or creditor of the company or by the Registrar-General, make an order directing the liquidator to make good the default within such time as is specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the liquidator.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a liquidator in respect of any such default.

Notification
that a
company is
in
liquidation.
Ibid. s. 280.

313. (1) Where a company is being wound up, whether by or under the supervision of the court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall have the words "in liquidation" added after the name of the company where it first appears therein.

(2)

No. 33, 1936.

(2) If default is made in complying with this section, the liquidator of the company and every receiver or manager, who knowingly and wilfully authorises or permits the default, shall be guilty of an offence.

Penalty: Twenty pounds.

(3) This section shall not apply to companies which are being wound up at the commencement of this Act.

314. Where a company is being wound up, all books and papers of the company and of the liquidator shall, as between the contributors of the company, be prima facie evidence of the truth of all matters purporting to be therein recorded.

Books of
company to be
evidence.
19 and 20
Geo. V, c.
23, s. 282.
1899, No. 40,
s. 153.

315. (1) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidator may be disposed of as follows, that is to say:—

Disposal of
books and
papers of
company.
19 and 20
Geo. V, c.
23, s. 283.
1899, No. 40,
s. 154.

(a) in the case of a winding up by, or subject to the supervision of, the court, in such way as the court directs; and

(b) in the case of a members' voluntary winding up, in such way as the company by extraordinary resolution directs, and, in the case of a creditors' voluntary winding up, in such way as the committee of inspection or, if there is no such committee, as the creditors of the company, direct.

(2) After five years from the dissolution of the company no responsibility shall rest on the company, the liquidator, or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.

(3) Provision may be made by general rules for enabling the Registrar-General to prevent, for such period (not exceeding five years from the dissolution of the company) as the Registrar-General thinks proper, the destruction of the books and papers of a company which has been wound up, and for enabling any creditor

or

11c. 33, 1936.

or contributory of the company to make representations to the Registrar-General and to appeal to the court from any direction which may be given by the Registrar-General in the matter.

(4) Any person who acts in contravention of any general rules made for the purposes of this section or of any direction of the Registrar-General thereunder, shall be guilty of an offence.

Penalty: One hundred pounds.

Information as to
liquidation,
19 and 20
Geo. V, c.
23, s. 281.

316. (1) Where a company is being wound up, the liquidator shall, at such intervals as are prescribed, and at such other times as the Registrar-General orders, until the winding up is concluded, file with the Registrar-General a statement in the prescribed form, containing the prescribed particulars with respect to the proceedings in and position of the liquidation, and also file with the Registrar-General—

- (a) an account in the prescribed form and verified by statutory declaration of his receipts and payments as liquidator; and
- (b) a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

(2) The Registrar-General may cause the account to be audited, and for the purposes of the audit the liquidator shall furnish and produce to the auditor such vouchers, information, books and accounts as he requires.

(3) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times to inspect the account and statement, and to receive a copy thereof or extract therefrom.

(4) Any person who untruthfully states himself in writing to be a creditor or contributory of the company shall be guilty of a contempt of court, and shall, on the application of the liquidator, be punishable accordingly.

(5) A liquidator who fails to comply with this section shall be guilty of an offence.

Penalty: Fifty pounds for each day during which the default continues.

(6)

(6) Where a company has not sufficient available assets the liquidator shall not be required to incur any expense in relation to the winding up without the express direction of the Registrar-General.

No. 33, 1936.
S.A., No. 2196,
s. 383.
Vic., No. 3659,
s. 289.

(7) The Registrar-General shall report to the court any matter which in his opinion is a misfeasance, neglect or omission on the part of the liquidator, and the court may order the liquidator to make good any loss which the estate of the company has sustained thereby, or make such other order in the premises as it thinks fit.

317. (1) If it appears either from any account or statement filed with the Registrar-General under section three hundred and sixteen of this Act or otherwise that a liquidator has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt, the liquidator shall forthwith pay the money to an account at the Treasury named the Liquidator's Unclaimed Moneys Account (in this section referred to as "the prescribed account"), and furnish to the Colonial Treasurer the prescribed particulars regarding such payment. The receipt of the prescribed officer of the Treasury shall be an effectual discharge to the liquidator in respect of the moneys mentioned therein.

Unclaimed assets to be paid to prescribed account.
cf. 19 and 20 Geo. V, c. 23, s. 285.

(2) The court may at any time on the application of the Registrar-General order any liquidator to submit to it an account of any unclaimed or undistributed assets in his hands or under his control, verified by affidavit, and may direct and enforce an audit thereof and may direct him to pay them into "the prescribed account."

(3) For the purposes of this section the court may exercise all the powers conferred by this Act with respect to the discovery and realisation of the property of the company, and the provisions of this Act with respect thereto shall, with such modifications as are prescribed, apply to proceedings under this section.

(4) The provisions of this section shall not, except as expressly declared in this Act, deprive any person of any other right or remedy to which he is entitled against the liquidator or any other person.

(5)

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(5) Any person claiming to be entitled to any money paid into the prescribed account in pursuance of this section may apply to the court for payment to him of any sum due to him, and if satisfied that the person claiming is entitled thereto, the court shall make an order for the payment accordingly and such order shall be given effect to by the Colonial Treasurer.

(6) Any person dissatisfied with the decision of the court in respect of a claim made in pursuance of this section may appeal therefrom in the prescribed manner.

Resolutions
passed at
adjourned
meetings of
creditors and
contributories.
19 and 20
Geo. V, c.
23, s. 287.

Meetings to
ascertain
wishes of
creditors or
contribu-
tories.
19 & 20
Geo. V,
c. 23, s.
288.

1899, No. 40,
ss. 100,
148.

318. Where, after the commencement of this Act, a resolution is passed at an adjourned meeting of any creditors or contributories of a company, the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

319. (1) The court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories of the company, as proved to it by any sufficient evidence, and may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held, and conducted in such manner as the court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Act or the articles.

Judicial
notice of
signature of
officers.
19 and 20
Geo. V, c.
23, s. 289.

320. In all proceedings under this Part of this Act, all courts, judges, and persons judicially acting, and all officers, judicial or ministerial, of any court, or employed in enforcing the process of any court, shall take judicial notice of the signature of any officer of the court, and also of the official seal or stamp of the several offices of the court appended to or impressed on any document made, issued, or signed under the provisions of this Part of this Act, or any official copy thereof.

321.

321. (1) Any affidavit required to be sworn under the provisions or for the purposes of this Part of this Act may be sworn in the State, or elsewhere within the dominions of His Majesty, before any court, judge, or person lawfully authorised to take and receive affidavits or before any of His Majesty's consuls or vice-consuls in any place outside His Majesty's dominions.

(2) All courts, judges, justices, commissioners, and persons acting judicially shall take judicial notice of the seal or stamp or signature, as the case may be, of any such court, judge, person, consul, or vice-consul attached, appended, or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part of this Act.

DIVISION 6.—*Provisions as to dissolution.*

322. (1) Where a company has been dissolved, the court may at any time within two years after the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the court to be interested, make an order, upon such terms as the court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) It shall be the duty of the person on whose application the order was made, within seven days after the making of the order, or such further time as the court allows, to file with the Registrar-General for registration an office copy of the order, and if that person fails so to do he shall be guilty of an offence.

Penalty: Five pounds for every day during which the default continues.

323. (1) Where the Registrar-General has reasonable cause to believe that a company is not carrying on business or is not in operation, he may send to the company by post a letter inquiring whether the company is carrying on business or is in operation.

(2) If the Registrar-General does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company by post a registered letter referring

No. 33, 1936.

Affidavits,
etc., in State
and
dominions.

19 and 20
Geo. V, c.
23, s. 293.

Power of
court to
declare
dissolutio
of compan
void.

Ibid. s. 294.

Registrar-
General may
strike
defunct
company off
register.

Ibid. s. 295.

No. 33, 1936.

referring to the first letter, and stating that no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Gazette with a view to striking the name of the company off the register.

(3) If the Registrar-General either receives an answer to the effect that the company is not carrying on business or is not in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Gazette and send to the company by post, a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a company is being wound up, the Registrar-General has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be filed by the liquidator have not been so filed for a period of six consecutive months, the Registrar-General shall publish in the Gazette and send to the company or the liquidator, if any, a like notice as is provided in subsection three of this section.

(5) At the expiration of the time mentioned in the notice the Registrar-General may, unless cause to the contrary is previously shown by the company or the liquidator, strike its name off the register, and shall publish notice thereof in the Gazette, and on the publication in the Gazette of this notice the company shall be dissolved:

Provided that—

(a) the liability, if any, of every director, managing officer, and member of the company shall continue, and may be enforced as if the company had not been dissolved; and

(b) nothing in this subsection shall affect the power of the court to wind up a company the name of which has been struck off the register.

(6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the court on an application made by

by the company or member or creditor before the expiration of twenty years from the publication in the Gazette of the notice may, if satisfied that the company was, at the time of the striking off, carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and upon an office copy of the order being filed with the Registrar-General for registration the company shall be deemed to have continued in existence as if its name had not been struck off and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or, if no office has been registered, to the care of some director or officer of the company, or, if there is no director or officer of the company whose name and address are known to the Registrar-General, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

324. (1) Where, after a company has been dissolved, it is proved to the satisfaction of the Registrar-General that the company, if still existing, would be legally or equitably bound to carry out, complete, or give effect to some dealing, transaction, or matter, and that in order to carry out, complete, or give effect to the same some purely ministerial, administrative, or mechanical *act* (not discretionary) should have been done by or on behalf of the company, or should be done by or on behalf of the company if still existing including the withdrawal of a caveat, the giving or executing a discharge for a satisfied mortgage, a surrender of a lease determined otherwise than by effluxion of time, a grant or surrender of an easement, a transfer or instrument under the Real Property Act, 1900, or any Act amending or in substitution for that Act, a conveyance, assignment, receipt, or any deed or document of any description whatever where the withdrawal, giving, or executing the same would not have

Registrar-
General
to act as
representa-
tive of
defunct
company in
certain
events.
cf. Vic., N.3
3,659, s. 231.

No. 33, 1936. have been a matter of option or discretion on the part of the company, the Registrar-General, as representing the company or its liquidator, may, under the provisions of this section do or cause to be done any such act as he thinks the case so proved requires.

(2) The Registrar-General shall execute or sign any deed, instrument, or document in pursuance of the provisions of this section by signing his name in his official capacity in the place where the company would or should have executed or signed, adding a memorandum stating that he has done so in pursuance of this section; and that execution or signature shall have the same force, validity, and effect as if the company, if existing, had duly executed such deed, instrument, or document.

(3) This section and section three hundred and twenty-five shall extend to a case where the dissolution occurred before the commencement of this Act as well as to a case in which the dissolution occurs after such commencement.

Outstanding assets of defunct company to vest in Registrar-General.
Vic., No. 3,659, s. 232.

325. Where, after a company has been dissolved, there remains any outstanding property, real or personal, which was vested in the company or to which it was entitled, or over which it had a disposing power at the time it was so dissolved, but which was not got in, realised upon, or otherwise disposed of or dealt with by the company or its liquidator, such property, except called and uncalled capital, shall for the purposes mentioned in sections three hundred and twenty-six and three hundred and twenty-seven of this Act, notwithstanding any statute or rule of law to the contrary, by the mere operation of this section, be and become vested in the Registrar-General for all the estate and interest therein, legal or equitable, of the company or its liquidator at the date the company was dissolved, together with all claims, rights, and remedies which the company or its liquidator then had in respect thereof.

Outstanding realty, how disposed of.
Ibid. s. 233.

326. (1) Upon it being proved to the satisfaction of the Registrar-General that there is vested in him by operation of section three hundred and twenty-five of this Act any land, messuage, tenement, or hereditament, corporeal, or incorporeal, whether of freehold, leasehold, or any other tenure whatever, and whether solely or together

together with any other person, wherein the estate or interest of the company is a beneficial estate or interest and not merely held in trust, it shall be lawful for the Registrar-General to sell or otherwise dispose of or deal with the same, or with any part thereof, or with any estate or interest therein, as to the Registrar-General seems expedient; and thereupon or at any time thereafter it shall be lawful for the Registrar-General to sell or otherwise dispose of or deal with the same, either solely or in concurrence with any other person, in such manner, for such price or other consideration, valuable or otherwise, by public auction or private contract, upon such terms and conditions as the Registrar-General thinks fit, with power to rescind any contract entered into for that purpose, and resell or otherwise dispose of or deal with such property as he thinks expedient or the circumstances of the case require, with power, if the sale be by public auction, to fix a reserve or to sell without a reserve or to buy in, as he thinks fit.

(2) For the purpose of effecting any such realisation, disposition, or dealing, the Registrar-General may make, execute, sign, and give such contracts, transfers, conveyances, assignments, receipts, discharges, deeds, and documents as he thinks necessary or proper.

(3) The moneys received by the Registrar-General in the exercise of any of the powers conferred on him by this Act shall in the first place be applied in defraying all costs and expenses incident thereto, and thereafter to any payment authorised by this Act, and he shall pay the surplus, if any, into such account as is prescribed, and the same shall, subject to general rules, be dealt with according to the orders of the court:

Provided that any claim, suit, or action for or in respect of any such moneys, shall be presented, made, or instituted within twenty years next after the dissolution of the company, after the expiration of which period of time all moneys then or at any time thereafter standing to the credit of the prescribed account shall, if there be no such claim, suit, or action pending, or any order of the court to the contrary, be paid into the Consolidated Revenue Fund.

No. 33, 1886.
Outstanding personalty, how disposed of.
 Vic., No. 3,659, s. 234.

327. (1) All personal property vested in the Registrar-General by the operation of this Act to which the company was beneficially entitled at the date it was dissolved may be got in, sold, or otherwise disposed of or dealt with by him.

(2) The Registrar-General shall, as to any such chattel, estate, or interest, and the sale or disposition thereof or dealing therewith, and the giving effect thereto, have all the discretionary and other powers which are conferred on him by section three hundred and twenty-six of this Act with regard to realty.

All moneys coming to the hands of the Registrar-General in respect of any such sale, disposition or dealing, shall be dealt with in the same way as is prescribed in relation to moneys derived from realty.

Registrar-General to keep accounts of assets which shall be open to inspection by Auditor-General.
Ibid. s. 236.

328. The Registrar-General shall record in the register of companies kept by him, upon the folio of the company, a statement of any property coming to his hand or under his control or to his knowledge, vested in him by operation of this Act and of his dealings therewith, and shall keep full and accurate accounts of all moneys arising therefrom and of how the same have been disposed of, and shall also keep all accounts, vouchers, receipts, and papers relating to that property and these moneys respectively, and the same shall be subject to inspection by the Auditor-General, who shall have all the powers in respect of such accounts as are or may be conferred upon him by any law relating to the collection and audit of public moneys and accounts for the time being in force.

PART XI.

WINDING UP OF UNREGISTERED COMPANIES.

Meaning of unregistered company.
 19 and 20 Geo. V, c. 23, s. 337.
 1899, No. 40, s. 2.

329. For the purposes of this Part "unregistered company" includes any partnership, association or company consisting of more than seven members and not registered under this Act and a foreign company, but does not include an "existing company."

330.

330. Subject to the provisions of this Part any ^{No. 33, 1930.} unregistered company may be wound up under this Act ^{Winding up of unregistered companies.} and all the provisions of this Act with respect to winding up shall apply to an unregistered company, with the following exceptions and additions:—

- (a) the principal place of business shall, for all the purposes of the winding up, be deemed to be the ^{19 and 20 Geo. V, c. 23, s. 338. cf. 1899, No. 40, s. 93.} registered office of the company;
- (b) an unregistered company shall not be wound up under this Act voluntarily or subject to supervision;
- (c) the circumstances in which an unregistered company may be wound up are as follows:—
 - (i) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;
 - (ii) if the company is unable to pay its debts; or
 - (iii) if the court is of opinion that it is just and equitable that the company should be wound up; and
- (d) an unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts—
 - (i) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding fifty pounds then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary or some director, manager, or principal officer of the company, or by otherwise serving in such manner as the court approves or directs, a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor;
 - (ii)

No. 38, 1936.

- (ii) if any action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member, and notice in writing of the institution of the action or proceeding having been served on the company by leaving the same at its principal place of business, or by delivering it to the secretary, or some director, manager, or principal officer of the company, or by otherwise serving the same in such manner as the court approves or directs, the company has not within ten days after service of the notice paid, secured, or compounded for the debt or demand, or procured the action or proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the action or proceeding, and against all costs, damages, and expenses to be incurred by him by reason of the same;
- (iii) if execution or other process issued on a judgment, decree, or order obtained in any court in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied; or
- (iv) if it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts.

Contributors in winding-up of unregistered company.
19 and 20 Geo. V, c. 23, s. 339.

331. (1) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the costs and expenses of winding up the company, and where the company has been dissolved in the country in which it

it is incorporated or formed every person who immediately before the dissolution was so liable shall be deemed to be a contributory, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability.

(2) In the event of the death or bankruptcy of any contributory, or marriage of any female contributory, the provisions of this Act with respect to the personal representatives, to the trustees of bankrupt contributories, and to the liabilities of husbands and wives respectively, shall apply.

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

333. Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company except by leave of the court, and subject to such terms as the court imposes.

334. The provisions of this Part with respect to unregistered companies shall be in addition to and not in restriction of any of the foregoing provisions of this Act with respect to winding up companies by the court, and the court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Act:

Provided that an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part.

No. 33, 1936.

PART XII.

RECEIVERS AND MANAGERS.

Disqualification for appointment as receiver.

19 and 20
Geo. V,
c. 23, s. 306.

335. (1) A body corporate shall not be qualified for appointment as receiver of the property of a company.

(2) Nothing in this section shall disqualify a body corporate from acting as receiver of the property of a company if acting under an appointment made before the commencement of this Act, but except in any such case, any body corporate which acts as such receiver shall be guilty of an offence.

Penalty: One hundred pounds.

(3) Nothing in this section shall affect the operation of subsection (6A) of section one hundred and fifteen of the Conveyancing Act, 1919-1932.

Power to appoint liquidator as receiver for debenture holders or creditors.

Ibid. s. 307.

Notification that receiver or manager appointed.

Ibid. s. 308.

336. Where an application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the court, the liquidator may be so appointed.

337. (1) Where a receiver or manager of the property of a company has been appointed, every order for goods or business letter issued by or on behalf of the company or the receiver or manager or the liquidator (if any) of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver or manager has been appointed.

(2) If default is made in complying with the requirements of this section, the company and every director, manager, secretary or other officer of the company, and every liquidator of the company, and every receiver or manager, who knowingly and wilfully authorises or permits the default, shall be guilty of an offence.

Penalty: Twenty pounds.

Liability of receiver.
C.A.,
No. 2196,
s. 311 (4).

(3) Any receiver or other authorised person entering into possession after the commencement of this Act of any assets of a company for the purpose of enforcing any charge whether created before or after the commencement of this Act shall, notwithstanding any agreement to the contrary, but without prejudice to his rights

rights against the company or any other person, be liable for debts incurred by him in the course of the receivership or possession for services rendered, goods purchased or property hired, leased, used or occupied. This subsection shall not be so construed as to constitute the person entitled to the charge a mortgagee in possession. No. 33, 1936.

338. The court may, on an application made to the court by the liquidator of a company or by the receiver or manager, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver or manager of the property of the company in any case where the remuneration is not fixed by the instrument and may from time to time, on an application made either by the liquidator or by the receiver or manager, vary or amend any order so made. Power of court to fix remuneration on application of liquidator. 19 and 20 Geo. V, c. 23, s. 309.

339. (1) Every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument shall, within one month, or such longer period as the Registrar-General allows after the expiration of the period of six months from the date of his appointment and of every subsequent period of six months, and within one month after he ceases to act as receiver or manager, file with the Registrar-General for registration an abstract in the prescribed form showing his receipts and his payments during that period of six months, or, where he ceases so to act, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing, and the aggregate amount of his receipts and of his payments during all preceding periods since his appointment. Filing with Registrar-General of accounts of receivers and managers. Ibid. s. 310.

(2) Every receiver or manager who makes default in complying with the provisions of this section shall be guilty of an offence.

Penalty: Five pounds for every day during which the default continues.

(3) The Registrar-General may cause the account to be audited and for the purpose of the audit the receiver or manager shall furnish the auditor with such vouchers and information as he requires, and the auditor may S.A., No. 2196, s. 313.

No. 33, 1936. may at any time require the production of and inspect any books or accounts kept by the receiver or manager.

The costs and expenses of the audit shall be paid by the receiver or manager out of any funds in his hands, or if he has no such funds, by the company.

(4) This section shall not extend to receivers and managers appointed before the commencement of this Act, but the provisions of section six of the Companies (Registration of Securities) Act, 1918, shall be deemed to continue in force with respect to such receivers and managers. A reference in such section to the Registrar shall be deemed to refer to the Registrar-General.

Enforce-
ment of
duty of
receiver
or manager
to make
returns, etc.
19 and 20
Geo. V, c.
23, s. 311.

340. (1) If—

- (a) any receiver of the property of a company who has made default in filing, delivering or making any return, account or other document or in giving any notice, which a receiver is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so; or
- (b) any receiver or manager of the property of a company who has been appointed under the powers contained in any instrument, has, after being required at any time by the liquidator of the company so to do, failed to render proper accounts of his receipts and payments and to pay over to the liquidator the amount properly payable to him;

the court may, on an application made for the purpose, make an order directing the receiver or manager, as the case may be, to make good the default within such time as is specified in the order.

(2) In the case of any such default as is mentioned in paragraph (a) of subsection one of this section an application for the purposes of this section may be made by any member or creditor of the company or by the Registrar-General, and the order may provide that all costs of and incidental to the application shall be borne by the receiver, and in the case of any such default as is mentioned in paragraph (b) of that subsection the application shall be made by the liquidator.

(3)

(3) Nothing in this section shall be taken to prejudice the operation of any enactments imposing penalties on receivers in respect of such default as is mentioned in paragraph (a) of subsection one of this section.

PART XIII.

RESTRICTIONS ON SALE OF SHARES.

341. (1) A person shall not—

(a) issue, circulate or distribute in the State any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside the State, whether the company has or has not established, or when formed will or will not establish, a place of business in the State, or has or has not commenced to carry on business in the State or when formed will or will not so commence, unless—

Provisions
with respect
to prospec-
tuses of
foreign
companies
inviting
subscrip-
tions for
shares or
offering
shares
for sale.
19 and 20
Geo. V, c.
23, s. 354.

- (i) before the issue, circulation or distribution of the prospectus in the State a copy thereof, certified by the chairman and two other directors of the company as having been approved by resolution of the managing body, or in the case of a company to be incorporated, by three at least of the promoters of the company, has been filed for registration with the Registrar-General;
- (ii) the prospectus states on the face of it that the copy has been so filed and also states immediately thereafter that the Registrar-General takes no responsibility as to its contents;
- (iii) the prospectus is dated; and
- (iv) the prospectus otherwise complies with this Part of this Act; or

(b)

No. 33, 1936.

(b) issue to any person in the State a form of application for shares in or debentures of such a company or intended company, unless the form is issued with a prospectus which complies with this Part of this Act:

Provided that this provision shall not apply if it is shown that the form of application was issued in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.

(2) Where any document by which any shares in or debentures of a company incorporated outside the State are offered for sale to the public would, if the company concerned had been a company within the meaning of this Act, have been deemed by virtue of section one hundred and forty-one of this Act to be a prospectus issued by the company, that document shall be deemed to be, for the purposes of this section, a prospectus issued by the company.

(3) An offer of shares or debentures for subscription or sale to any person whose ordinary business or part of whose ordinary business it is to buy or sell shares or debentures, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this section.

(4) Section one hundred and forty of this Act shall extend to every prospectus to which this section applies.

S.A., No.
2196 S.
366 (2).

(5) This section shall not apply—

(a) to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons; or

(b) to the issue to existing members of a company which is being liquidated for the purpose of reconstruction of a prospectus or form of application relating to shares in a company formed to acquire all or any of the assets of the company being liquidated, but,

but, except in any such case, this section shall apply to a prospectus or form of application whether issued with reference to or on or subsequent to the formation of a company.

(6) Any person who is knowingly responsible for the issue, circulation or distribution of any prospectus, or for the issue of a form of application for shares or debentures, in contravention of the provisions of this section shall be guilty of an offence.

Penalty: Five hundred pounds.

(7) In this and in section three hundred and forty-two of this Act "prospectus," "shares," and "debentures" have the same meanings as when used in relation to a company incorporated under this Act, and "place of business" includes a share transfer or share registration office.

342. (1) In order to comply with this Part of this Act a prospectus in addition to complying with the provisions of subparagraphs (ii) and (iii) of paragraph (a) of subsection one of section three hundred and forty-one of this Act shall—

(a) contain particulars with respect to the following matters—

- (i) the objects of the company;
- (ii) the instrument constituting or defining the constitution of the company;
- (iii) the enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected;
- (iv) an address in the State where the instrument, enactments or provisions, or copies thereof, and if they are in a foreign language a translation thereof certified in the prescribed manner, can be inspected;
- (v) the date on which and the country in which the company was incorporated;
- (vi) whether the company has established a place of business in the State, and if so, the address of its principal office in the State:

Requirements as to
prospectus.
19 and 20
Geo. V, c.
23, s. 355.

Provided

Provided that the provisions of subparagraphs (i), (ii), (iii) and (iv) of this paragraph shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business;

(b) subject to the provisions of this section, state the matters specified in Part I of Schedule Eight to this Act (other than those specified in paragraph one of that Part) and set out the reports specified in Part II of that Schedule subject always to the provisions contained in Part III of that Schedule:

Provided that—

- (i) where any prospectus is published as a newspaper advertisement, it shall be a sufficient compliance with the requirement that the prospectus shall specify the objects of the company if the advertisement specifies the primary object with which the company was formed;
- (ii) in paragraph three of Part I of Schedule Eight a reference to the constitution of the company shall be substituted for the reference to the articles; and
- (iii) paragraph one of Part III of that Schedule shall have effect as if the reference to the memorandum were omitted therefrom.

(2) Any condition requiring or binding any applicant for shares or debentures 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) 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) with respect to any matter not disclosed, he proves that he was not cognisant thereof;

(b)

- (b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or
- (c) the non-compliance or contravention was in respect of matters which, in the opinion of the court dealing with the case, were immaterial or were otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters contained in paragraph sixteen of Part I of Schedule Eight, no director or other person shall incur any liability in respect of the failure unless it is proved that he had knowledge of the matters not disclosed.

(4) Subject to subsection three of this section 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.

343. (1) A person shall not, whether by appointment or otherwise, go from house to house or from place to place offering shares for subscription or purchase to the public or any member of the public.

In this subsection "house" or "place" does not include an office used for business purposes and "office used for business purposes" includes that part of a building which is solely or mainly used for business trade or professional purposes, but does not include that part of a building which is solely or mainly used for residential purposes.

(2) Subject to the provisions of this subsection, it shall not be lawful to make an offer in writing to any member of the public (not being a person whose ordinary business or part of whose ordinary business it is to buy or sell shares, whether as principal or agent) of any shares for purchase, unless the offer is accompanied by a statement in writing (which shall be signed by the person making the offer and dated) containing such particulars as are required by this section to be included therein and otherwise complying with the requirements of this section, or, in the case of shares in a company incorporated

Schedule
Eight.

ef. 19 and 20
Geo. V, c.
23, s. 356.

No. 33, 1936.

incorporated outside the State, either by such a statement, or by such a prospectus as complies with this Part of this Act:

Provided that the provisions of this subsection shall not apply—

- (a) where the shares to which the offer relates are shares which are quoted on, or in respect of which permission to deal has been granted by, any recognised stock exchange in the Commonwealth, and the offer so states and specifies the stock exchange;
- (b) where the shares to which the offer relates are shares which a company has allotted or agreed to allot with a view to their being offered for sale to the public, and in respect of which section one hundred and forty-one of this Act applies; or
- (c) where the offer is made only to persons with whom the person making the offer has been in the habit of doing regular business in the purchase or sale of shares.

(3) The written statement shall not contain any matter other than the particulars required by this section to be included therein, and shall not be in characters less large or less legible than any characters used in the offer or in any document sent therewith.

(4) The statement shall contain particulars with respect to the following matters—

- (a) whether the person making the offer is acting as principal or agent, and, if as agent, the name of his principal and an address in the State where that principal can be served with process;
- (b) the date on which and the country in which the company was incorporated and the address of its registered or principal office in the State;
- (c) the authorised share capital of the company and the amount thereof which has been issued, the classes into which it is divided and the rights of each class of shareholders in respect of capital, dividends and voting;
- (d) the dividends, if any, paid by the company on each class of shares during each of the three financial years immediately preceding the offer, and

and if no dividend has been paid in respect of shares of any particular class during any of those years, a statement to that effect;

- (e) the total amount of any debentures issued by the company and outstanding at the date of the statement, together with the rate of interest payable thereon;
- (f) the names and addresses of the directors of the company;
- (g) whether or not the shares offered are fully paid up, and, if not, to what extent they are paid up;
- (h) whether or not the shares are quoted on, or permission to deal therein has been granted by, any recognised stock exchange in the Commonwealth, and, if so, which, and, if not, a statement that they are not so quoted or that no such permission has been granted;
- (i) where the offer relates to units, particulars of the names and addresses of the persons in whom the shares represented by the units are vested, the date of and the parties to any document defining the terms on which those shares are held, and an address in the State where that document or a copy thereof can be inspected.

(5) In subsection four of this section "company" means the company by which the shares to which the statement relates were or are to be issued.

(6) If any person acts, or incites, causes or procures any person to act, in contravention of this section, he shall be guilty of an offence.

Penalty: For a first offence, two hundred pounds or imprisonment for six months or both; for a second or subsequent offence, five hundred pounds, or imprisonment for twelve months, or both.

(7) Where a person convicted of an offence under this section is a company (whether a company within the meaning of this Act or not), every director and every officer concerned in the management of the company shall be guilty of the like offence unless he proves that the act constituting the offence took place without his knowledge or consent.

(8)

No. 33, 1926.

(8) In this section, unless the contrary intention appears—

“Shares” means the shares of a company or of a proposed company, whether a company within the meaning of this Act or not, and includes debentures and units and all such documents (commonly referred to as bonds) as confer or purport to confer on the holder thereof any claim against a company, whether such claim is present or future or certain or contingent or ascertained or sounding only in damages, but does not include shares in a co-operative society registered under the Co-operation Act, 1923-1935, or any policy or contract of insurance of any nature whatsoever,

“Unit” means any right or interest (by whatever name called) in a share,

and for the purposes of this section a person shall not in relation to a company be regarded as not being a member of the public by reason only that he is a holder of shares in the company or a purchaser of goods from the company.

(9) Where any person is convicted of having made an offer in contravention of the provisions of this section, the court before which he is convicted may order that any contract made as a result of the offer shall be void, and, where it makes any such order, may give such consequential directions as it thinks proper for the repayment of any money or the retransfer of any shares.

(10) Where the court makes an order under subsection nine of this section (whether with or without consequential directions) an appeal against the order and the consequential directions, if any, shall lie to the Supreme Court in its equitable jurisdiction.

Restrictions on
sale of shares in
companies with
illegal objects.
S.A. No. 2196.
• 369.

344. (1) A person shall not, whether as principal or agent, sell or offer, or agree to sell, or attempt to sell, any shares in any company, whether formed or to be formed within or outside the State, if any of the objects of the company is to do any act in or outside the State, or to carry on business in or outside the State, which act or business would, if done or carried on within the State, be illegal.

Penalty: Fifty pounds.

(2)

(2) In any proceedings for an offence against this section a document purporting to be a memorandum or proposed memorandum of association of a company shall on mere production be deemed *prima facie* evidence of the existence of the company, or proposal to form the company as the case may be, of the contents of its memorandum of association, and of the fact that its objects are those stated in the memorandum.

PART XIV.

MISCELLANEOUS.

345. (1) Where any shares or debentures have been offered to the public for subscription, all application and other moneys paid by any applicant on account of shares or debentures prior to the allotment thereof shall, until the allotment of such shares or debentures, be held by the company, or in the case of an intended company by the persons named in the prospectus as provisional directors and the promoters upon trust for the applicant.

Nothing contained in this subsection shall place any obligation or duty upon any bank or third person with whom any such moneys may have been deposited to inquire into or see to the proper application of such moneys so long as such bank or third person acts in good faith.

(2) If default is made in complying with any of the provisions of subsection one of this section, in the case of a company, every officer of the company in default, and in the case of an intended company, every person named in the prospectus as a proposed director and every promoter who knowingly and wilfully authorises or permits the default shall be guilty of an offence and liable to a penalty not exceeding one hundred pounds.

Application
moneys for
shares to be
held in
trust.

S.A. Act,
No. 2196,
s. 55.

No. 33, 1936.

Non-application of rule against perpetuities to certain schemes.

cf. S.A., No. 2196, s. 402.

346. The rule of law relating to perpetuities shall not apply and shall be deemed never to have applied to the trusts of any fund or scheme for the benefit of any employees of a company whether such fund or scheme was established before or after the commencement of this Act.

In this section—

“Company” includes any company or society formed, whether before or after the commencement of this Act, in pursuance of any Act or Imperial Act or of letters patent or royal charter or otherwise duly constituted according to law and a foreign company.

“Fund or scheme” includes any provident, superannuation, sick, accident, assurance, unemployment, pension, co-operative benefit or other like fund, scheme, arrangement or provision.

“Employee” includes a director or any person at any time in the employment of a company, and the wife, child, grandchild, parent, and any dependent of any such person and any other person entitled to or capable of receiving any benefit under any fund or scheme.

Prohibition or carrying on business with fewer than seven or, in the case of a proprietary company, two members.

19 and 20 Geo. V, c. 23, s. 28.

1899, No. 40, s. 245.

347. If at any time the number of members of a company is reduced, in the case of a proprietary company, below two, or, in the case of any other company, below seven, and it carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with fewer than two members, or seven members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.

Form of contracts.

19 and 20 Geo. V, c. 23, s. 29.

1899, No. 46, s. 241.

348. (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 under seal, may be made on behalf of the company in writing under the common seal of the company;

(b)

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

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

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

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

Bills of
exchange and
promissory
notes.
19 and 20
Geo. V, c.
23, s. 30.
1899, No. 40,
s. 244.

350. (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 wheresoever situate.

Execution of
deeds.
19 and 20
Geo. V, c.
23, s. 31.
1899, No. 40,
s. 251.

(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.

351. (1) A company whose objects require or comprise the transaction of business outside the State may, if authorised by its articles, have for use in any territory, district, or place not situate in the State, 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.

Official seal for
use abroad.
19 and 20 Geo.
V, c. 23, s. 32.

(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)

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

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

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

Authentication
of documents.
19 and 20
Geo. V, c.
23, s. 83.
1899, No. 40,
s. 280.

352. (1) A document or proceeding requiring authentication by a company may be signed by a director, secretary, or other authorised officer of the company, and need not be under its common seal.

(2) This section shall not apply to any document which by this Act is to be filed or lodged with the Registrar-General, which shall be signed or authenticated as by this Act required or as may be prescribed.

Penalty for
false statement.
19 and 20
Geo. V, c.
23, s. 362.
Schedule
Eleven.

353. If any person in any return, report, certificate, balance-sheet or other document, required by or for the purposes of any of the provisions of this Act specified in Schedule Eleven, wilfully makes a statement false in any material particular, knowing it to be false, he shall be guilty of an offence.

Penalty: On conviction on indictment, imprisonment for two years; and on summary conviction one hundred pounds or imprisonment for four months or both.

Penalties for
offences.
Ibid. s. 365
(1).

354. The penalty for any offence against this Act for which no penalty is otherwise expressly provided shall be a penalty not exceeding five pounds, and where the offence is a continuing offence, a penalty not exceeding five pounds for every day during which the offence continues.

355.

355. For the purpose of any provision in this Act which provides that an officer of a company who is in default shall be liable to a penalty, "officer who is in default" means any director, manager, secretary or other officer of the company, who knowingly and wilfully authorises or permits the default, refusal or contravention mentioned in the provision.

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"Officer who is in default."
19 and 20
Geo. V, c. 28,
s. 365 (2).

356. (1) Offences against this Act which are punishable by imprisonment for a period exceeding six months shall unless the contrary intention appears in this Act be punishable on indictment.

How offences punishable.
Commonwealth Interpretation Act, 1904-1932, s. 4.

(2) Offences against this Act which—

Ibid. s. 5.

- (a) are punishable by imprisonment, but not for a period exceeding six months; or
- (b) not being punishable by imprisonment are not declared to be indictable offences,

shall unless the contrary intention appears in this Act be punishable on summary conviction.

357. (1) No proceeding taken before any court under the Companies Acts or under this Act shall be invalidated by any defect, irregularity, or deficiency of notice or time, unless the court is of opinion that substantial injustice may be caused by such defect, irregularity or deficiency, and that such injustice cannot be remedied by any order of such court.

Proceedings not invalidated by irregularities.
S.A., No. 2196, s. 380.

(2) The court may, if it thinks fit, make an order declaring that such proceeding is valid, notwithstanding any such defect, irregularity or deficiency.

358. Where proceedings are instituted under this Act against any person nothing in this Act shall be taken to require any person who has acted as solicitor for the defendant to disclose any privileged communication made to him in that capacity.

Saving for privileged communications.
19 and 20
Geo. V, c. 23, s. 369.

359. A document may be served on a company by leaving it at the registered office of the company with some person apparently in the service of the company or by post enclosed in a prepaid registered letter addressed to the company at its registered office.

Service of documents on company.
Ibid. s. 370.
1899, No. 40, s. 228.

The service by post shall be deemed to be effected at the time at which the letter would be delivered in the ordinary course of post.

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—
 Costs in actions
 by certain
 limited
 companies.
 19 and 20
 Geo. V, c.
 23, s. 371.
 1899, No. 40,
 s. 259.

360. Where a limited company is plaintiff in any action or other legal proceeding any judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

Power of court
 to grant relief
 in certain cases.
 19 and 20
 Geo. V, c.
 23, s. 372.

361. (1) If in any proceeding for negligence, default, breach of duty, or breach of trust against a person to whom this section applies it appears to the court hearing the case that that person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that court may relieve him, either wholly or partly, from his liability on such terms as the court thinks fit.

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the court for relief, and the court on any such application shall have the same power to relieve him as under this section it would have had if it had been a court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

(3) Where any case to which subsection one of this section applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if he is satisfied that the defendant ought in pursuance of that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge may think proper.

(4)

(4) The persons to whom this section applies are the following:—

- (a) directors of a company;
- (b) managers of a company;
- (c) officers of a company;
- (d) persons employed by a company as auditors, whether they are or are not officers of the company.

362. All the provisions of the Arbitration Act, 1902, and any law amending or in substitution for that Act shall be deemed to apply, so far as they are applicable, to arbitrations in pursuance of this Act.

363. Every appointment of an arbitrator shall be made—

- (a) on the part of the company—
 - (i) under its common seal; or
 - (ii) under the hand of the manager or secretary or any two directors of the company; or
 - (iii) under the hand of the liquidator, if the company is in liquidation;
- (b) on the part of any other party, under the hand of that party; and
- (c) on the part of a corporation aggregate under the common seal of the corporation.

364. (1) If a company, having made default in complying with any provision of this Act which requires it to file with, deliver or send to the Registrar-General any return, account or other document, or to give notice to him of any matter, fails to make good the default within fourteen days after the service of a notice on the company requiring it to do so, the court may, on an application made to the court by any member or creditor of the company or by the Registrar-General, make an order directing the company and any officer thereof to make good the default within such time as is specified in the order.

Enforcement
of duty of
company to
make returns
to Registrar-
General.
19 and 20
Geo. V, c.
23, s. 315.

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

(3)

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Power to
enforce orders.
19 and 20
Geo. V, c.
28, s. 373.
1899, No. 40,
s. 127.
Costs.

Appeals.

Unclaimed
moneys.

Fees.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or its officers in respect of any such default.

365. (1) Orders made by the court under this Act may be enforced in the same manner as orders made in any suit pending therein.

(2) The costs of any proceeding before the court under this Act shall be borne by such party to the proceeding as the court may, in its discretion, direct.

366. Except where otherwise provided, an appeal by way of rehearing shall lie to the Full Court from any order or decision made or given by the court under this Act.

367. (1) It shall be the duty of every auditor of a company in his audit to enquire of the manager or secretary of the company as to whether the company has complied with the provisions of the Unclaimed Moneys Act, 1917, so far as it applies to the company, and to furnish, with his report to the company pursuant to section one hundred and fifteen, a certificate that such an enquiry was made and the result thereof.

If the auditor fails to comply with the provisions of this subsection he shall be guilty of an offence.

Penalty: Twenty pounds.

(2) The company shall attach the certificate to the annual return filed with the Registrar-General pursuant to section ninety of this Act.

(3) Every article of association which purports to enable a company or the directors of the company to forfeit to the company any moneys which are payable to the owner thereof shall be void and of no effect.

(4) If the company fails to comply with the provisions of this section the company and every officer of the company who is in default shall be guilty of an offence.

Penalty: Fifty pounds.

368. There shall be paid to the Registrar-General in respect of matters done by him under this Act and of any filing record or registration made pursuant to this Act and for any search in any register or record

record kept thereunder and in respect of proceedings under this Act in relation to the winding up of companies as to which any duty or function is imposed on him by this Act such fees as are prescribed by regulations made by the Governor under the provisions of this Act.

369. (1) Any person may on payment of such fees respectively as are prescribed inspect the documents kept by the Registrar-General, and require a certificate of the incorporation of any company, or a copy or extract of any other document, to be certified by the Registrar-General.

(2) No process for compelling the production of any document kept by the Registrar-General shall issue from any court except with the leave of that court, and any such process if issued shall bear thereon a statement that it is issued with the leave of the court.

(3) A copy of or extract from any document kept and registered at the office of the Registrar-General, certified to be a true copy under the hand of the Registrar-General shall in all legal proceedings be admissible in evidence as of equal validity with the original document.

370. (1) Any past or present member of any joint stock company may, in respect of any claim or demand which—

(a) such member may have, either solely or jointly with any other person, against such company, or the funds or property thereof; or
 (b) such company may have against such member solely or jointly with any other person,

sue and be sued by such company, in the name of the officer thereto appointed, in any action, suit, or other proceeding.

(2) No action, suit, or other proceeding shall be in anywise affected by reason of any party or other person in whom any interest may be averred, or who may be in any wise interested or concerned in any such action, suit, or other proceeding, being or having been a member of such company.

(3) All such actions, suits, or other proceedings shall be conducted and have effect as if the same had been between strangers.

Inspection,
production and
evidence of
documents kept
by Registrar-
General.

Members
may sue
and be sued
by the
company.
11 Vic. No.
56, s. 1.
1899, No.
40, s. 278.

No. 33, 1936.Officer to be
replaced as
soon as
possible.6 Vic.
No. 2.1899, No. 40,
s. 279.

371. (1) Any banking, trading, or other company which may by any Act sue or be sued in the name of any officer or other person thereto appointed shall, on the death, resignation, or removal of such officer or person, proceed with as little delay as possible to elect some other person in his stead.

(2) If such election does not take place within one month from the date of such death, resignation, or removal, then all the privileges of the said company whose officer has so died, resigned, or been removed, conferred upon it by any Act, shall utterly cease and determine, and thenceforth any person may sue or proceed against any individual members of such company so losing its privileges as aforesaid.

Set-off.
11 Vic. No.
56, s. 2.1899, No.
40, s. 280.

372. (1) No claim or demand which any member of any joint stock company may have in respect of—

- (a) his share of the capital or joint stock thereof; or
- (b) any dividends, interest, profits, or bonus payable or apportionable in respect of such share,

shall be capable of being set off against any demand which the company may have against such member on any other account.

(2) All proceedings in respect of any other matter or thing may be carried on as if no such claim or demand as abovementioned existed.

Member
may be
guilty of
embezzling
property of
company.11 Vic. No.
56, s. 3.
1899, No.
40, s. 281.

373. (1) If any member of any such company or of any corporation—

- (a) steals or embezzles any property belonging to such company or corporation; or
- (b) commits any crime or offence against or with intent to injure or defraud such company or corporation,

such member shall be liable to prosecution for any such crime or offence.

(2) For the purposes of any such prosecution the property of such company or corporation may be stated as the property of the officer appointed to sue and be sued on behalf of such company or in the name of such corporation, as the case may be.

(3)

No. 33, 1926.

(3) Any such member may thereupon be lawfully convicted as if he were not a member of such company or corporation, any law, usage, or custom to the contrary notwithstanding.

374. In case the merits of any demand by or against any such company have been determined in any action, suit, or other proceeding by or against the officer of the company appointed as aforesaid, such proceedings may be pleaded in bar of any other action, suit, or other proceeding by or against the said company or officer for the same demand.

375. All the provisions of any Act enabling any such company to sue and be sued in the name of an officer thereof relative to actions, suits, and proceedings commenced or prosecuted under the authority thereof shall be applicable to actions, suits, and proceedings commenced or prosecuted under the authority of this Part of this Act.

Merits of
any demand
determined
may be
pleaded in
bar.

11 Vic. No.
56, s. 4.

1899, No. 40,
s. 282.

Provisions of
Acts enabling
company to
sue and be
sued in name
of officer to
apply to suits
under this
Part of this
Act.

11 Vic. No. 56,
s. 5.

1899, No. 40,
s. 283.

376. (1) A memorial of the name of such officer appointed as aforesaid shall be registered in the office of the Registrar-General; and such memorial so registered shall, upon proof that such memorial is signed with the handwriting of the persons whose signatures appear thereto, be received in evidence in all proceedings and cases whatever as proof of the appointment and authority of such officer.

Memorials
to be re-
corded in
office of
Registrar-
General.

11 Vic. No. 56,
s. 7.

1899, No. 40,
s. 284.

(2) In any action, suit, or other proceeding brought by any such officer the plaintiff or applicant shall not be nonsuited or fail for want of proof of the registration of such memorial unless it appear that no such memorial has been registered.

377. In any proceedings the production of a certificate under the seal of the Registrar-General shall be received as *prima facie* evidence that the requirement specified in the certificate of any enactment set out in Schedule Twelve—

Evidence of
non-compli-
ance with
statutory
require-
ments.

Schedule

Twelve.

- (a) either has or has not been complied with at the date of the certificate; or
- (b) has been complied with upon the date specified in the certificate but not before that date.

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Authority of
Registrar-
General to
destroy
documents
and valida-
tion.

378. (1) The Registrar-General may from time to time destroy the whole or such part as he thinks fit of any annual returns filed by a company or any certificate sent pursuant to section ninety-one of this Act or any documents delivered to him pursuant to section sixty-eight of this Act or any annual summary of capital or list of members filed pursuant to section twenty of the Companies Act, 1899.

(2) The Registrar-General shall not exercise the power conferred by subsection one of this section save with respect to documents which have been filed, sent or delivered for more than ten years.

Validation.

(3) The action of the Registrar-General in from time to time destroying summaries of capital or lists of members filed pursuant to section twenty of the Companies Act, 1899, which had been so filed for more than five years prior to their destruction, is hereby validated.

Court em-
powered to
grant relief
for non-
compliance
with s. 55
of Act
1899, No.
40, or 37
Vic., No. 19,
s. 57.
No. 47,
1900, sec. 1.

379. (1) Whenever, before the commencement of this Act, any shares in the capital of any existing company credited as fully or partly paid up have been issued for a consideration other than cash, and at or before the issue of such shares no contract or no sufficient contract was filed with the Registrar of Joint Stock Companies in compliance with section fifty-five of the Companies Act, 1899, or in compliance with section fifty-seven of the Companies Act, 1874, thereby repealed, the company or any person interested in such shares or any of them may apply to the court for relief, and the court, if satisfied that the omission to file a contract or sufficient contract was accidental or due to inadvertence, or that for any reason it is just and equitable to grant relief may make an order for the filing with the Registrar-General of a sufficient contract in writing, and directing that on such contract being filed within a specified period it shall in relation to such shares operate as if it had been duly filed with the Registrar of Joint Stock Companies aforesaid before the issue of such shares and may include in such relief any shares in respect of which the memorandum of association of such company has been signed by any signatory thereto.

(2) Any such application may be made either before or after an order has been made or an effective resolution has been passed for the winding-up of such company,

company, and either before or after the commencement of any proceedings for enforcing the liability on such shares consequent on the omission aforesaid, and notice of any such application shall be served on the company, if the application is not made by the company.

(3) Any such order may be made on such terms and conditions as the court may think fit, and the court may make such order as to costs as it deems proper, and may direct that an office copy of the order shall be filed with the Registrar-General aforesaid, and the order shall in all respects have full effect.

(4) Where the court in any such case is satisfied that the filing of the requisite contract would cause delay or inconvenience, or is impracticable, it may in lieu thereof direct the filing of a memorandum in writing, in a form approved by the court, specifying the consideration for which the shares were issued, and may direct that on such memorandum being filed within a specified period it shall in relation to such shares operate as if it were a sufficient contract in writing within the meaning of section fifty-five of the Companies Act, 1899, or of section fifty-seven of the Companies Act, 1874, as the case may be, and had been duly filed with the Registrar of Joint Stock Companies aforesaid before the issue of such shares.

The memorandum shall before the filing thereof be stamped with the same amount of stamp duty as would be chargeable upon the requisite contract, unless the contract is produced to the Registrar-General duly stamped, or unless he is otherwise satisfied that the contract was duly stamped.

380. (1) The Governor may make regulations not inconsistent with this Act—

Power to make regulations and general rules.

(a) for and in relation to—

(i) the alteration of any of the tables in Schedule Two;

(ii) the alteration of the forms in Schedule Six and Schedule Seven.

(b) prescribing all matters, forms and things which by this Act are required or permitted to be prescribed under the provisions of any of the

Schedules Six and Seven.

No. 33, 1936.

Schedule
Thirteen.

the enactments of this Act enumerated in Part I of Schedule Thirteen to this Act, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act or for the conduct of any business relating to the administration thereof.

The regulations may authorise the Registrar-General to reject any document tendered to him for registration or to be filed which is typewritten on the grounds that either the paper on which it is typewritten does not conform to the prescribed standard or that the ink used is not of the prescribed type, or that the condition of the document is unsatisfactory to him.

The regulations may prescribe fees of different amounts in respect of the same requirement of this Act or the regulations made thereunder, the amounts depending on whether the requirement is complied with within the prescribed time or not.

Such regulations may impose a penalty not exceeding twenty pounds, which may be recovered in any court of summary jurisdiction.

General
rules to
be made by
Judges.

(2) The judges of the Supreme Court or any three of them may make general rules—

- (a) concerning the mode of proceedings to be had for winding up companies in the court;
- (b) with regard to any matter or thing which is by this Act required or permitted to be prescribed or which is necessary or convenient to be prescribed under the provisions of any of the enactments of this Act and without limiting the generality of the foregoing power of those enumerated in Part II of Schedule Thirteen to this Act;
- (c) imposing fees to be collected in respect of any such proceeding, matter or thing;

Schedule
Thirteen.

but the general practice of the Supreme Court in its equitable jurisdiction for the time being shall so far as the same is applicable and not inconsistent with this Act or the general rules made thereunder, apply to all proceedings for or in a winding up.

(3)

(3) Regulations and general rules made under No. 33, 1936. any provision of this Act shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication, or from a later date specified in the regulations or general rules;
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations or general rules have been laid before such House disallowing any regulation or general rule or part thereof such regulation, general rule, or part shall thereupon cease to have effect.

(4) No alteration made by the Governor in any of the tables contained in Schedule Two to this Act ^{Schedule Two.} shall affect any company registered before the date of such alteration taking effect, or repeal as respects such company any portion of such table.

(5) For the purposes of the Amendments Incorporation Act, 1906, an alteration made by the Governor under paragraph (a) of subsection one of this section shall be deemed to have been made by an Act.

(6) Any regulations in force at the commencement of this Act made pursuant to the Conveyancing Act, 1919, or of any Act amending that Act relating to fees to be paid to the Registrar of Joint Stock Companies in respect of any matter proceeding or thing done in his office shall continue in force until repealed or replaced by regulations made under this Act and a reference to such Registrar shall be construed as a reference to the Registrar-General.

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SCHEDULES.

Sec. 3 (1).

SCHEDULE ONE.

Number of Act.	Title of Act.	Extent of Repeal.
1899, No. 40	Companies Act, 1899	The whole
1900, No. 47	Companies Act Amendment Act, 1900.	The whole.
1906, No. 22	Companies (Amendment) Act, 1906.	The whole.
1907, No. 9	Companies (Amendment) Act, 1907.	The whole
1918, No. 37	Companies (Registration of Securities) Act, 1918.	The whole.
1934, No. 8	Royal Commissions (Amendment) Act, 1934.	Section 3
1935, No. 53	Companies (Amendment) Act, 1935.	Section 2.

Secs. 6, 18, 95.

SCHEDULE TWO.

TABLE A.

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES.

Preliminary.

1. In these Regulations:—

“the Act” means the Companies Act, 1936.

When any provision of the Act is referred to, the reference is to that provision as modified by any law for the time being in force.

Unless the contrary intention appears, expressions defined in the Act or any modification thereof made by any law in force at the date at which these Regulations become binding on the company, shall have the meaning so defined.

Shares.

2. Subject to the provisions, if any, in that behalf of the memorandum of association, and without prejudice to any special rights previously conferred on the holders of existing shares, any share may be issued with such preferred, deferred, or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital, or otherwise, as the company may from time to time by special resolution determine, and any preference share may, with the sanction of a special resolution be issued on the terms that it is, or at the option of the company is liable, to be redeemed.

3. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the

the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall mutatis mutandis apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll.

4. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the seal of the company, specifying the share or shares held by him and the amount paid up thereon, provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

5. If a share certificate, letter of allotment, transfer receipt or any other document of title to shares is lost, defaced or destroyed, a duplicate thereof may be issued by the company upon the conditions set out in section one hundred and eighty-two of the Act applicable thereto.

6. No part of the funds of the company shall directly or indirectly be employed in the purchase of, or in loans upon the security of, the company's shares, but nothing in this regulation shall prohibit transactions mentioned in the proviso to subsection one of section one hundred and forty-eight of the Act.

Lien.

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

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

9. For giving effect to any such sale the directors may authorise some person to transfer the shares sold to the purchaser thereof.

The purchaser shall be registered as the holder of the shares comprised in any such transfer and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

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

Calls on Shares.

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

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

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

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

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

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

Transfer and Transmission of Shares.

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

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

I, *A.B.*, of _____, in consideration of the sum of £ _____ paid to me by *C.D.*, of _____ (hereinafter called "the said transferee") do hereby transfer to the said transferee the share [or shares]

shares] numbered in the undertaking called the Company, Limited, to hold unto the said transferee, subject to the several conditions on which I hold the same; and I, the said transferee, do hereby agree to take the said share [or shares] subject to the conditions aforesaid. As witness our hands the day of

Witness to the signatures of, &c.

19. The directors may decline to register any transfer of shares, not being fully paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien.

The directors may also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year.

The directors may decline to recognise any instrument of transfer unless the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

If the directors refuse to register a transfer of any shares, they shall within one month after the date on which the transfer was lodged with the company send to the transferee notice of the refusal.

20. The legal personal representatives of a deceased sole holder of a share shall be the only persons recognised by the company as having any title to the share.

In the case of a share registered in the names of two or more holders, the survivors or survivor, or the legal personal representatives of the deceased survivor, shall be the only persons recognised by the company as having any title to the share.

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

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

Forfeiture of shares.

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

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remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

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

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

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

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

28. A statutory declaration in writing that the declarant is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share. The company may receive the consideration, if any, given for the share on any sale or disposition thereof, and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of and he shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

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

Conversion of Shares into Stock.

30. The company may by special resolution convert any paid-up shares into stock, and reconvert any stock into paid-up shares of any denomination.

31. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as, and subject to which, the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; but the directors may from time to time fix the minimum

minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

32. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges, and advantages as regards dividends, voting at meetings of the company, and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

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

Alteration of Capital.

34. The company may from time to time by special resolution increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

35. Subject to any direction to the contrary that may be given by the company in general meeting, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled.

The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of those shares in such manner as they think most beneficial to the company.

The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

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

37. The company may by special resolution—

- (a) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
- (b) subdivide its existing shares, or any of them, into shares of smaller amount than is fixed by the memorandum of association subject, nevertheless, to the provisions of paragraph (d) of subsection one of section one hundred and fifty-three of the Act;
- (c) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

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38. The company may by special resolution reduce its share capital and any capital redemption reserve fund in any manner and with, and subject to, any incident authorised, and consent required, by law.

General Meetings.

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

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

41. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section ninety-four of the Act.

If at any time there are not within the State sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Notice of General Meetings.

42. Subject to the provisions of subsection two of section ninety-seven of the Act relating to special resolutions, seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day, and the hour of meeting, and, in case of special business, the general nature of that business shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but with the consent of all the members entitled to receive notice of some particular meeting, that meeting may be convened by such shorter notice and in such manner as those members may think fit.

43. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any member shall not invalidate the proceedings at any meeting.

Proceedings

Proceedings at General Meetings.

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

45. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members (or in the case of a proprietary company, two members) personally present shall be a quorum.

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

47. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

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

49. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

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

50. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members present in person or by proxy entitled to vote or by one member or two members so present and entitled, if that member or those two members together hold not less than fifteen per cent. of the paid-up capital of the company, and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

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51. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and unless the meeting is adjourned the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

52. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

53. A poll demanded on the election of a chairman or on a question of adjournment, shall be taken forthwith.

A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Votes of Members.

54. On a show of hands every member present in person or by a representative appointed pursuant to section ninety-six of the Act shall have one vote.

On a poll every member shall have one vote for each share or each ten pounds of stock of which he is the holder.

55. In the case of joint holders the vote of the senior who tenders a vote whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

56. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, or an insane patient within the meaning of the Lunacy Act of 1898, may vote, whether on a show of hands or on a poll, by his committee, or by some other person in the nature of a committee or appointed by that Court, or by the manager of his estate or by the Master in Lunacy, as the case may be, and any such committee, manager, or other person or Master may, on a poll, vote by proxy.

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

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

59. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation, either under seal, or under the hand of an officer or attorney duly authorised.

A proxy need not be a member of the company.

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

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

“
I, Company, Limited.
, in the
of , being a member of the
Company, Limited, hereby appoint , of
as my proxy, to vote for me and on my behalf at the [ordinary or
extraordinary, as the case may be] general meeting of the company
to be held on the day of and at any
adjournment thereof.

Signed this day of ”

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

Corporations Acting by Representatives at Meetings.

63. Any corporation which is a member of the company may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company or of any class of members of the company, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

Directors.

64. Subject to section one hundred and twenty of the Act the number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association.

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

66. The qualification of a director shall be the holding of at least one share in the company.

Powers and Duties of Directors.

67. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not, by the Act or by these articles, required to be exercised by the company in general meeting, subject, nevertheless, to any regulation of these articles, to the provisions of the Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

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

or

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

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

70. The directors shall cause minutes to be made in books provided for the purpose—

(a) of all appointments of officers made by the directors;
 (b) of the names of the directors present at each meeting of the directors and of any committee of the directors;
 (c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors; and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

The Seal.

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

Disqualification of Directors.

72. The office of director shall be vacated if the director—

- (a) ceases to be a director by virtue of section one hundred and twenty-two of the Act; or
- (b) without the consent of the company in general meeting holds any other office of profit under the company except that of managing director or manager; or
- (c) becomes bankrupt; or
- (d) becomes prohibited from being a director by reason of any order made under section two hundred and fifty-five or section three hundred and seven of the Act; or
- (e) becomes an insane patient or an insane or incapable person within the meaning of the Lunacy Act of 1898; or
- (f) resigns his office by notice in writing to the company; or
- (g) is directly or indirectly interested within the meaning of section one hundred and twenty-nine of the Act in any contract with the company or participates in the profits of any contract with the company:

Provided, however, that a director shall not vacate his office by reason of his being a member of any corporation, firm, society or association which has entered into contracts with or done any work for the company if he shall have declared the nature of his interest in manner

manner required by section one hundred and twenty-nine of the Act, but the director shall not vote in respect of any such contract or work or any matter arising thereout, and if he does so vote his vote shall not be counted.

Rotation of Directors.

73. At the first ordinary general meeting of the company the whole of the directors shall retire from office, and at the ordinary general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.

74. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

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

76. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto and in default the retiring director shall be deemed to have been re-elected unless at such meeting it is resolved not to fill up such vacated office.

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

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

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

80. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead.

The person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

Proceedings of Directors.

81. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit.

Questions arising at any meeting shall be decided by a majority of votes.

In case of an equality of votes the chairman shall have a second or casting vote.

A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

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82. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall when the number of directors exceeds three be three, and when the number of directors does not exceed three, be two.

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

84. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

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

86. A committee may elect a chairman of its meetings.

If no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

87. A committee may meet and adjourn as it thinks proper.

Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote.

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

Dividends and Reserve.

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

90. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

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

92. Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid up on any of the shares in the company dividends may be declared and paid according to the amounts of the shares.

No

No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.

93. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalising dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit.

94. If several persons are registered as joint holders of any share, any one of them may give effectual receipts for any dividend or other moneys payable on or in respect of the share.

95. Any dividend may be paid by cheque or warrant sent through the post to the registered address of the member or person entitled thereto or in the case of joint holders to any one of such joint holders at his registered address or to such person and such address as the member or person entitled or such joint holders as the case may be may direct.

Every such cheque or warrant shall be made payable to the order of the person to whom it is sent or to the order of such other person as the member or person entitled or such joint holders as the case may be may direct.

96. No dividend shall bear interest against the company.

Accounts.

97. The directors shall cause proper accounts to be kept with respect to—

- (a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
- (b) all sales and purchases of goods by the company; and
- (c) the assets and liabilities of the company.

98. The accounts shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

99. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meetings.

100. The directors shall from time to time in accordance with section one hundred and three of the Act, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance-sheets and reports as are referred to in that section.

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101. A copy of every balance-sheet (including every document required by law to be annexed or attached thereto) which is to be laid before the company in general meeting shall not less than seven days before the date of the meeting be sent to all persons entitled to receive notices of general meetings of the company.

Audit.

102. Auditors shall be appointed and their duties regulated in accordance with sections one hundred and thirteen, one hundred and fourteen, and one hundred and fifteen of the Act.

Notices.

103. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address within the State) to the address, if any, within the State supplied by him to the company for the giving of notices to him.

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of twenty-four hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

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

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

106. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, within the State supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

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

(a) every member except those members who (having no registered address within the State) have not supplied to the company an address within the State for the giving of notices to them; and also to

(b)

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

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

(Note.—As to signatures and attestation see section 19 (2) of the Act.)

TABLE B.

See. 21.

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

Memorandum of Association.

1. The name of the company is "The Eastern Carrying Company, Limited."

2. The objects for which the company is established are, "the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object."

3. The liability of the members is limited.

4. The share capital of the company is two hundred thousand pounds divided into one thousand shares of two hundred pounds each.

5. The place in New South Wales in which the registered office of the company is proposed to be situate is

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Descriptions of Subscribers.	Number of shares taken by each subscriber.
1. John Jones of	merchant 200
2. John Smith of	merchant 25
3. Thomas Green of	merchant 30
4. John Thompson of	merchant 40
5. Caleb White of	merchant 15
6. Andrew Brown of	merchant 5
7. Caesar White of	merchant 10
Total shares taken	
	325

Dated the
day of

19

Witness to the above signatures,
A.B., Pitt Street, Sydney.

TABLE

No. 38, 1936.

Sec. 21.

TABLE C.

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

Memorandum of Association.

1. The name of the company is "The Cumberland School Association, Limited."

2. The objects for which the company is established are, "the carrying on a school for boys in the county of Cumberland and the doing all such other things as are incidental or conducive to the attainment of the above object."

3. The liability of the members is limited.

4. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding ten pounds.

5. The place in New South Wales in which the registered office of the company is proposed to be situate is

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, Addresses, and Descriptions of Subscribers.

1. John Jones of	schoolmaster.
2. John Smith of	schoolmaster.
3. Thomas Green of	schoolmaster.
4. John Thompson of	schoolmaster.
5. Caleb White of	schoolmaster.
6. Andrew Brown of	schoolmaster.
7. Caesar White of	schoolmaster.

Dated the
day of

19 .

Witness to the above signatures,

A.B., Pitt Street, Sydney.

ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM OF ASSOCIATION.

Preliminary.

1. In these Regulations—

"Act" means the Companies Act, 1936.

When any provision of the Act is referred to, the reference is to such provision as modified by any law for the time being in force.

Unless the context otherwise requires, expressions defined in the Act or any modification thereof made by any law in force at the date at which these regulations become binding on the company, shall have the meanings so defined.

Members.

Members.

2. The number of members with which the company proposes to be registered is 500, but the directors may from time to time register an increase of members.

3. The subscribers to the memorandum of association and such other persons as the directors shall admit to membership shall be members of the company.

General Meetings.

4. The first general meeting shall be held at such time, not being less than one month nor more than three months after the incorporation of the company, and at such place, as the directors may determine.

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

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

7. The directors may, whenever they may think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or in default may be convened by such requisitionists, as provided by section ninety-four of the Act.

If at any time there are not within the State sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Notice of General Meetings.

8. Subject to the provisions of subsection two of section ninety-seven of the Act relating to special resolutions, seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day, and the hour of meeting and, in case of special business, the general nature of that business shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as

No. 33, 1936.

as are, under the regulations of the company, entitled to receive such notices from the company; but with the consent of all the members entitled to receive notice of some particular meeting, that meeting may be convened by such shorter notice and in such manner as those members may think fit.

9. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any member shall not invalidate the proceedings at any meeting.

Proceedings at General Meetings.

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

11. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members personally present shall be a quorum.

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

13. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

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

15. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

16. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least two members present in person or by proxy entitled to vote and unless a poll is so demanded, a declaration by the chairman that

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a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

17. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and unless the meeting is adjourned the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

18. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

19. A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith.

A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Votes of Members.

20. Every member shall have one vote.

21. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, or an insane patient within the meaning of the Lunacy Act of 1898, may vote, whether on a show of hands or on a poll, by his committee or by some other person in the nature of a committee or appointed by that court, or by the manager of his estate or by the Master in Lunacy as the case may be, and any such committee, manager or other person or Master may, on a poll, vote by proxy.

22. No member shall be entitled to vote at any general meeting unless all moneys presently payable by him to the company have been paid.

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

24. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation, either under the seal, or under the hand of an officer or attorney so authorised.

A proxy need not be a member of the company.

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

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

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

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behalf at the [ordinary or extraordinary, as the case may be] general meeting of the company to be held on the _____ day of _____ and at any adjournment thereof.

Signed this _____ day of _____ "

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

Corporations acting by Representatives at Meetings.

28. Any corporation which is a member of the company may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

Directors.

29. Subject to section one hundred and twenty of the Act the number of directors and the names of the first directors shall be determined in writing by a majority of the subscribers to the memorandum.

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

Powers and Duties of Directors.

31. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not by the Act, or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulation of these articles, to the provisions of the Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

32. The directors shall cause minutes to be made in books provided for the purpose—

- (a) of all appointments of officers made by the directors;
- (b) of the names of the directors present at each meeting of the directors and of any committee of the directors;
- (c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors;

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

The Seal.

33. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of a director and of the secretary or such other person

as

as the directors may appoint for the purpose; and that director and the secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Disqualifications of Directors.

34. The office of director shall be vacated, if the director—

- (a) without the consent of the company in general meeting holds any other office of profit under the company except that of managing director or manager; or
- (b) becomes bankrupt; or
- (c) becomes prohibited from being a director by reason of any order made under section two hundred and fifty-five or three hundred and seven of the Act; or
- (d) becomes an insane patient or an insane or incapable person within the meaning of the Lunacy Act of 1898; or
- (e) resigns his office by notice in writing to the company; or
- (f) is directly or indirectly interested within the meaning of section one hundred and twenty-nine of the Act, in any contract with the company or participates in the profits of any contract with the company:

Provided, however, that a director shall not vacate his office by reason of his being a member of any corporation, firm, society or association which has entered into contracts with or done any work for the company if he shall have declared the nature of his interest in manner required by section one hundred and twenty-nine of the Act.

A director shall not vote in respect of any contract in which he is interested or any matter arising thereout, and if he does so vote his vote shall not be counted.

Rotation of Directors.

35. At the first ordinary general meeting of the company the whole of the directors shall retire from office, and at the ordinary general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.

36. The directors to retire in every year shall be those who have been longest in office since their last election but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

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

38. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto and in default the retiring director shall be deemed to have been re-elected unless at such meeting it is resolved not to fill up such vacated office.

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

No. 33, 1936.

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

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

42. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead.

The person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

Proceedings of Directors.

43. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes.

In case of an equality of votes the chairman shall have a second or casting vote.

A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

44. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall, when the number of directors exceed three, be three and shall, when the number of directors does not exceed three, be two.

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

46. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but, if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

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

48. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

49. A committee may meet and adjourn as it thinks proper.

Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote.

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

Accounts.

51. The directors shall cause proper accounts to be kept with respect to—

- (a) all sums of money received and expended by the company and the matter in respect of which the receipt and expenditure takes place;
- (b) all sales and purchases of goods by the company; and
- (c) the assets and liabilities of the company.

52. The accounts shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

53. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meeting.

54. The directors shall from time to time in accordance with section one hundred and three of the Act, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance-sheets and reports as are referred to in that section.

55. A copy of every balance-sheet (including every document required by law to be annexed or attached thereto) which is to be laid before the company in general meeting shall not less than seven days before the date of the meeting be sent to all persons entitled to receive notice of general meetings of the company.

Audit.

56. Auditors shall be appointed and their duties regulated in accordance with sections one hundred and thirteen, one hundred and fourteen, and one hundred and fifteen of the Act.

Notices.

No. 88, 1986.

Notices.

57. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address within the State) to the address, if any, within the State supplied by him to the company for the giving of notices to him.

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of twenty-four hours after the letter containing the same is posted and in any other case at the time at which the letter would be delivered in the ordinary course of post.

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

59. Notice of every general meeting shall be given in some manner hereinbefore authorised to every member except those members who (having no registered address within the State) have not supplied to the company an address within the State for the giving of notices to them.

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

Names, Addresses, and Descriptions of Subscribers.

1. John Jones of	schoolmaster.
2. John Smith of	schoolmaster.
3. Thomas Green of	schoolmaster.
4. John Thompson of	schoolmaster.
5. Caleb White of	schoolmaster.
6. Andrew Brown of	schoolmaster.
7. Caesar White of	schoolmaster.

Dated the day of 19 .

Witness to the above signatures,

A.B., Pitt Street, Sydney.

Sec. 21

TABLE D.

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

Memorandum of Association.

1. The name of the company is "The Tourist Hotel Company, Limited."

2.

2. The objects for which the company is established are "the facilitating travelling in the State of New South Wales, by providing hotels and conveyances by sea and by land for the accommodation of travellers, and the doing all such other things as are incidental or conducive to the attainment of the above object."

3. The liability of the members is limited.

4. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for the payment of the debts and liabilities of the company, contracted before he ceases to be a member, and the costs, charges and expenses of winding up the same and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding twenty pounds.

5. The share capital of the company shall consist of five hundred thousand pounds, divided into five thousand shares of one hundred pounds each.

6. The place in New South Wales in which the registered office of the company is proposed to be situate is

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.	Number of Shares taken by each Subscriber.
1. John Jones of	merchant 200
2. John Smith of	merchant 25
3. Thomas Green of	merchant 30
4. John Thompson of	merchant 40
5. Caleb White of	merchant 15
6. Andrew Brown of	merchant 5
7. Caesar White of	merchant 10
<hr/>	
Total shares taken	325
<hr/>	

Dated the 19 day of ..

Witness to the above signatures,

A.B., Pitt Street, Sydney.

ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM OF ASSOCIATION.

1. The Articles of Table A set out in Schedule Two to the Companies Act, 1936, shall be the articles of association of the company and apply to the company.

Names,

No. 33, 1936.

Names, Addresses, and Descriptions of Subscribers.

1. John Jones of	merchant.
2. John Smith of	merchant.
3. Thomas Green of	merchant.
4. John Thompson of	merchant.
5. Caleb White of	merchant.
6. Andrew Brown of	merchant.
7. Caesar White of	merchant.

Dated the day of 19

Witness to the above signatures,

A.B., Pitt Street, Sydney.

Sec. 21.

TABLE E.

MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY HAVING A SHARE CAPITAL.

Memorandum of Association.

1. The name of the company is "The Patent Stereotype Company."
2. The objects for which the company is established are "the working of a patent method of founding and casting stereotype plates, of which method John Smith of Sydney is the sole patentee, and the doing of all such things as are incidental or conducive to the attainment of the above objects."
3. The liability of the members is unlimited.
4. The place in New South Wales in which the registered office of the company is proposed to be situate is

We, the several persons whose names are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.	Number of Share taken by each Subscriber
1. John Jones of	merchant 3
2. John Smith of	merchant 2
3. Thomas Green of	merchant 1
4. John Thompson of	merchant 2
5. Caleb White of	merchant 2
6. Andrew Brown of	merchant 1
7. Abel Brown of	merchant 1

Total shares taken 12

Dated the day of 19

Witness to the above signatures,

A.B., Pitt Street, Sydney.

ARTICLES

ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM
OF ASSOCIATION.

No. 33, 1936.

1. The share capital of the company is two thousand pounds divided into twenty shares of one hundred pounds each.
2. The company may by special resolution—
 - (a) increase the share capital by such sum to be divided into shares of such amount as the resolution may prescribe;
 - (b) consolidate its shares into shares of a larger amount than its existing shares;
 - (c) subdivide its shares into shares of a smaller amount than its existing shares;
 - (d) cancel any shares which at the date of the passing of the resolution have not been taken or agreed to be taken by any person;
 - (e) reduce its share capital in any way.
3. The Articles of Table A set out in Schedule Two to the Companies Act, 1936 (other than Articles 30, 31, 32, 33, 34, 37 and 38) shall be deemed to be incorporated with these articles and shall apply to the company.

Names, Addresses, and Descriptions of Subscribers.

1. John Jones of	merchant.
2. John Smith of	merchant.
3. Thomas Green of	merchant.
4. John Thompson of	merchant.
5. Caleb White of	merchant.
6. Andrew Brown of	merchant.
7. Abel Brown of	merchant.

Dated the day of 19 .

Witness to the above signatures,

A.B., Pitt Street, Sydney.

TABLE F.

Sec. 44.

MEMORANDUM AND RULES OF A NO-LIABILITY COMPANY.

PART I.

MEMORANDUM OF A NO-LIABILITY COMPANY.

1. The name of the company is to be " no liability."
2. The objects of the company are [set out objects].
3. The first place of operations (or intended operations) is at .
4. The first registered office of the company will be situated at .
5. The members incur no liability.
6. The value of the company's intended property (or property held in trust for the company as the case may be) including the plant and machinery is .
7. The amount of money at the credit of the company, or any person on its behalf, is £ , and the total liability of the company, or which the company is intended to assume or undertake, is .
8. The nominal capital of the company is in shares of each.

No. 88, 1936.

9. The number of contributing shares subscribed for is
10. The name of the provisional [or first] manager is
11. Ten per centum of the contributing capital has been duly paid up in cash.
12. The only contracts entered into on behalf of this company are those of which the particulars are stated hereunder.

Dated this day of 19 .

We, the persons whose names and addresses are subscribed hereby, apply to register [*here insert name of company*] as a no-liability company.

[Witnesses.]

[Signatures.]

Declaration verifying memorandum for registration.

I, A.B., do hereby solemnly declare and affirm that—

- (1) I am the manager [or provisional manager] of the said intended company.
- (2) The above statements are, to the best of my belief and knowledge, true in every particular.

And I make this solemn declaration as to the matters aforesaid according to the law in this behalf made, and subject to the punishment by law provided for any wilfully false statement in any such declaration.

Declared before me this

day of , 19 . A.B.,

Manager [or provisional manager].

Part II.

RULES OF A NO-LIABILITY COMPANY.

Members.

1. When two or more persons are registered as the joint holders of any shares, any notice required by these articles to be served on a member may be served on any of such holders, and such notice shall be deemed to be served on all the holders of the shares.

Any one of such joint holders may give effectual receipts for any dividends payable in respect of such shares.

2. The company shall be entitled to treat the registered holder of any share as the absolute owner thereof, and accordingly shall not be bound to recognise any equitable or other claim to or interest in such share on the part of any other person, save as herein provided.

Shares.

3. The certificates for shares shall be issued under the common seal of the company and signed by two directors, and countersigned by the manager or secretary or some other person appointed by the directors for that purpose.

4. Every member shall be entitled to one certificate for the shares registered in his name, or to several certificates each for a part of such shares, and for the purpose of this article several joint holders shall be deemed one member:

Provided

Provided that the sum of sixpence may be charged by the company for every certificate after the first in any case where a member requires more than one certificate.

5. If a share certificate, letter of allotment, transfer receipt or any other document of title to shares is lost, defaced or destroyed a duplicate thereof may be issued by the company upon the conditions set out in section one hundred and eighty-two of the Act applicable thereto.

6. The certificate for shares registered in the names of two or more persons may be delivered to any of such persons.

Transfer of shares.

7. The instrument of transfer of any share shall be signed both by the transferee and transferee; the transferee shall be deemed to remain the holder of such share until the name of the transferee is entered in the register in respect thereof.

8. The instrument of transfer of shares shall be in the following form, or as near thereto as circumstances will admit—

I, A.B., of , in consideration of the sum of paid to me by C.W., of [hereinafter called transferee], do hereby transfer to the said transferee the share or shares numbered standing in my name in the register of the , no liability, to hold unto the said transferee, his executors, administrators, and assigns, subject to the conditions on which I hold the same immediately before the execution hereof; and I, the said transferee, do hereby agree to take the said share or shares, subject to the said conditions. As witness our hands this day of

9. Every instrument of transfer shall be left at the office for registration accompanied by a certificate of the shares to be transferred, and such other evidence (if any) as the directors may require to prove the title of the transferee or his right to transfer the shares.

Transmission of shares.

10. The legal personal representative of a deceased member shall be the only person recognised by the company as having any title to his or her shares.

11. Any person becoming entitled to any shares in consequence of the death or bankruptcy of any member may be registered as a member upon such evidence being produced as may from time to time be required by the directors.

12. Any person becoming entitled to any shares in consequence of the death or bankruptcy of any member may, instead of being himself registered, elect to have some person named by him registered as a transferee of such shares.

Calls.

Calls.

13. The directors may from time to time, subject to the provisions of the Act, make such calls upon the members in respect of all moneys unpaid upon their shares as they shall think proper:

Provided always that no such call shall exceed one-tenth of the nominal value of the share.

14. A resolution authorising a call shall fix the amount of the call, and the date of its payment.

15. A call shall be deemed to have been made at the time when the resolution of the directors authorising such call was passed.

16. The notice of a call required by the Act to be given to each member shall specify the person to whom the call is payable.

General meetings.

17. The first general meeting of the company shall be held at such time, not being less than one month nor more than three months after the registration of the company, and at such place as the directors shall determine.

Subsequent general meetings shall be held in accordance with the provisions of the Act and at such time and place as may be prescribed by the company in general meeting, and if no time or place is prescribed as aforesaid, then at such time and place as the directors shall determine.

18. The abovementioned general meetings shall be called ordinary meetings, all other meetings of the company shall be called extraordinary meetings.

19. The directors may, whenever they shall think fit, and they shall, upon a requisition made pursuant to section ninety-four of the Act, convene an extraordinary general meeting.

20. Seven days' notice of every general meeting, specifying the place, day, and hour of meeting, and in case of special business the general nature of such business, shall be given to the members; but the accidental omission to give such notice to any of the members, or the non-receipt of such notice by any member, shall not invalidate any proceedings at any such meeting.

Proceedings at general meetings.

21. The business of an ordinary meeting shall be to receive and consider the profit and loss account, and the balance-sheet and the reports of the directors and auditors; to elect directors and other officers in the place of those retiring by rotation; to authorise and declare dividends, and to transact any other business which under the Act or the articles of the company ought to be transacted at an ordinary meeting, and any business which is brought under consideration by the report of the directors issued with the notice convening such meeting.

All other business transacted at an ordinary meeting, and all business transacted at an extraordinary meeting shall be deemed special.

22. No business shall be transacted at any general meeting except the declaration of a dividend, unless a quorum of members is present at the time the meeting proceeds to business.

Such quorum shall be ascertained as follows, that is to say—if the persons who hold shares in the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the number of the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, provided that no quorum shall in any case exceed twenty:

Provided also that in ascertaining whether a quorum is present at any general meeting, all members represented by proxy shall be counted.

23. If within fifteen minutes from the time appointed for the meeting a quorum is not present, the meeting if convened upon the requisition of members shall be dissolved, but in any other case it shall stand adjourned till the same day in the next week at the same time and place, and notice thereof shall be given by advertisement in a newspaper circulating in the town or district in which the registered office is situated, and if at such adjourned meeting a quorum as hereinbefore provided is not present, those members who are present shall be a quorum, and may transact the business for which the meeting was called.

24. The chairman of the directors shall be entitled to take the chair at every general meeting, or if there be no such chairman, or if at any meeting he shall not be present within fifteen minutes after the time appointed for holding such meeting, the members present shall choose another director as chairman, and if no director be present, or if all the directors present decline to take the chair, then the members present shall choose one of their number to be chairman.

25. Every question submitted to a meeting shall be decided in the first instance by a show of hands, and in the case of an equality of votes the chairman shall, both on the show of hands and at the poll, have a casting vote, in addition to the votes to which he may be entitled as a member.

26. At any general meeting, unless a poll is demanded by at least three shareholders, a declaration by the chairman that a resolution has been carried or carried by a particular majority, or lost or not carried by a particular majority, and an entry to that effect in the minutes of proceedings of the company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

27. If a poll is demanded as aforesaid, it shall be taken in such a manner and at such time and place as the chairman of the meeting directs, and either at once or after an adjournment, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

No. 88, 1986.

28. The chairman of a general meeting may with the consent of the meeting adjourn the same from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

29. Any poll duly demanded on the election of a chairman or on any question of adjournment shall be taken at the meeting and without adjournment.

Votes of members:

30. Every member shall have one vote for every share held by him up to ten, he shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every fifteen shares beyond the first hundred shares.

31. If any member is a lunatic, or person of unsound mind, or an incapable person, as defined in the Lunacy Act of 1898, he may vote by his committee or other legal curator.

32. If two or more persons are jointly entitled to any shares the member whose name stands first on the register of members as one of the holders of such shares, and no other, shall be entitled to vote in respect of the same.

33. No member shall be entitled to vote at any general meeting unless all calls payable on his shares have been paid.

34. Votes may be given either personally or by proxy.

35. The instrument appointing a proxy shall be in writing or print under the hand of the appointer or his attorney, or if such appointer be a corporation under its common seal. No person shall be appointed a proxy who is not a member of the company and entitled to vote.

36. The instrument appointing a proxy, and the power of attorney (if any) under which it is executed, shall be deposited at the office of the company not less than twenty-four hours before the time of holding the meeting at which the person named in such instrument purposes to vote; but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution, unless it purports to appoint a proxy to act for the appointer during his absence from New South Wales.

37. Any instrument appointing a proxy shall be as nearly as circumstances will permit in the form or to the effect following:—

Name of company.

I, _____ of _____, being a member of the _____ No-liability, hereby appoint _____ of _____, my proxy, to vote for me and on my behalf at the [ordinary or extraordinary] general meeting of the company to be held on the _____ day of _____, and at any adjournment thereof [or at any meeting of the company that may be held in the year _____ or during my absence from New South Wales].

As witness my hand this _____ day of _____

Witness

Directors.

Directors.

38. No person shall be qualified to be a director who is not a member of the company.

39. The number of the directors shall be not less than three or more than seven until otherwise determined by a general meeting.

40. The first directors of the company shall be appointed by the subscribers to the memorandum for registration, and failing and until such appointment the subscribers to the memorandum for registration shall be the first directors of the company.

At the first general meeting of the company after the incorporation of the company the whole of the first directors of the company shall retire from office, and new directors shall be elected, and at the first ordinary meeting in every subsequent year reckoned from 1st January to 1st January one-third of the directors for the time being, or if their number is not a multiple of three, then the number nearest to one-third (but not exceeding one-third) shall retire from office.

41. The one-third or other number as aforesaid to retire at the first general meeting at which directors are to retire shall be determined by lot; in every subsequent year the one-third or other nearest number who have been longest in office shall retire.

As between two or more who have been in office an equal length of time, the director to retire shall, in default of agreement between them, be determined by lot.

The length of time a director has been in office shall be computed from his last election or appointment where he has previously vacated office.

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

43. The company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of members to be directors, and may fill up other vacancies.

44. If at any meeting at which an election of directors ought to take place the places of the retiring directors are not filled up, subject to article number twenty-three, the meeting shall stand adjourned till the same day in the next week, at such hour and place as the majority of members present at the meeting shall decide.

If at such adjourned meeting the places of the retiring directors are not filled up, the retiring directors, or such of them as have not had their place filled up, shall continue in office until the ordinary meeting in the next year, and so on from time to time until their places are filled up.

45. The company may by special resolution remove any director before the expiration of his period of office, and may, by ordinary resolution, appoint another qualified person in his stead.

The person so appointed shall hold office during such time only as the director, in whose place he is appointed, would have held the same if he had not been removed.

No. 33, 1936.

46. Any casual vacancy occurring among the directors may be filled by the directors, but any person so chosen shall retain his office only so long as the vacating director would have retained the same if no vacancy had occurred.

47. The office of director shall be vacated—

- (a) If he become bankrupt, or suspend payment, or assign his estate for the benefit of his creditors.
- (b) If he becomes an insane patient or an insane or incapable person within the meaning of the Lunacy Act of 1898.
- (c) If he absent himself from the meetings of the directors during a period of three calendar months without special leave of absence from the directors.
- (d) If by notice in writing to the company he resigns his office.

48. The continuing directors may act, notwithstanding any vacancy in their body, but so that if the number fall below the minimum above fixed the directors shall not, except for the purpose of filling vacancies, act so long as the number is below the minimum.

Proceedings of directors.

49. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings as they think fit, and may determine the quorum necessary for the transaction of business.

Until otherwise determined two directors shall form a quorum.

Questions arising at any of the meetings shall be decided by a majority of votes. In case of equality of votes the chairman shall have a second or casting vote.

50. A director may at any time, and the manager or secretary shall at the request of any two directors, convene a meeting of directors.

51. The directors may elect a chairman of their meetings and determine the period for which he is to hold office, but if no such chairman is elected, or if at any meeting the chairman is not present at the appointed time for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

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

Powers of directors.

53. The management of the business of the company shall be vested in the directors who may exercise all such powers and do all such acts and things as may be exercised or done by the company, and are not by these articles or by the Act directed or required to be exercised or done by the company in general meeting, but subject to

to the provisions of the Act and of these said articles and to any regulations from time to time made by the company in general meeting:

Provided that no regulation so made shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

Remuneration of directors.

54. The remuneration of the directors shall be determined by the company in general meeting.

The seal.

55. The directors shall provide for the safe custody of the common seal, and the said seal shall not be used except by the authority of the directors previously given, and every instrument to which the seal is affixed shall be signed by two directors and countersigned by the manager or secretary or some other person appointed by the directors.

Dividends.

56. The directors may declare dividends to be paid to the members in proportion to their shares, and subject to the rights of holders of shares issued on special conditions, dividends shall be paid on all shares alike, irrespective of the amount paid up thereon.

57. No dividend shall be payable except out of the profits arising from the business of the company.

58. The directors may, before declaring any dividend, set aside out of the profits of the company such sum as they may think proper as a reserve fund to meet contingencies or for equalising dividends, for repairing or maintaining the works and machinery connected with the business of the company or any part thereof, and the directors may invest the sum so set apart upon such securities as they may select.

59. Notice of any dividend that may have been declared shall be given to each member in manner hereinafter provided for giving notices.

60. The directors may deduct from the dividends payable to any member the amount of any call payable on his shares.

61. No dividend shall bear interest as against the company.

Accounts.

62. The directors shall cause true accounts to be kept with respect to—

- (a) all sums of money received and expended by the company, and the matter in respect of which the receipt and expenditure takes place;
- (b) all sales and purchases of goods by the company; and
- (c) the assets and liabilities of the company.

63. The books of account shall be kept at the registered office of the company, or at such other place, or places as the directors think fit, and shall always be open to the inspection of the directors.

64. The directors shall from time to time in accordance with section one hundred and fifteen of the Act cause to be prepared and to

No. 33, 1936.

to be laid before the company in general meeting such profit and loss accounts, balance sheets, and reports as are referred to in that section.

65. A copy of every balance-sheet (including every document required by law to be annexed or attached thereto), which is to be laid before the company in general meeting shall not less than seven days before the date of the meeting be sent to all persons entitled to receive notice of general meetings of the company.

Audit.

66. Auditors shall be appointed and their duties regulated in accordance with section one hundred and thirteen, one hundred and fourteen and one hundred and fifteen of the Act.

Notice.

67. Any notice may be served by the company upon any member, either personally or by sending it through the post in a prepaid envelope, addressed to such member at his address as entered in the register of members.

68. All notices to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members, and notice so given shall be sufficient notice to all the holders of such share.

69. Any notice sent by post shall be deemed to have been served on the day after the same shall have been posted, and in proving such service it shall be sufficient to prove that the notice was properly addressed, and that it was put into the post office (postage prepaid).

Interpretation.

70. In these Rules "the Act" means the Companies Act, 1936.
(NOTE.—As to signatures and attestation see section 19 (2) of the Act.)

Sec. 44 (8).

SCHEDULE THREE.

CERTAIN PROVISIONS RELATING TO NO-LIABILITY COMPANIES.

**Power to
borrow and
mortgage.**
1899 No. 40,
S. 212.

1. Any company registered under Part IV of this Act shall, if authorised by its rules as originally framed, or as altered by special resolution, have power to borrow or raise money, and to secure the payment thereof with interest and other charges, and also the payment of any past debt or obligation of the company, with interest and other charges, by mortgage or charge of or upon the whole of the real and personal property, undertaking, and rights of the company, or any part thereof, in such manner as to the company seems fit: This clause shall be read as subject to the provisions of section two hundred and ninety-eight, and to the other provisions in this Act contained.

2. (a) Any company registered under Part IV of this Act shall, if authorised by its rules as originally framed, or as altered by special resolution, have power to sell and dispose of, or let and demise, the whole of the real and personal property, undertaking, and rights of the company, or any part thereof, for such consideration, upon such terms and conditions, and in such manner in every respect as to the company seems fit, and such company may convey, transfer, assign, or otherwise assure the property sold to the purchaser thereof, or as such purchaser directs.

No. 33, 1936.
Power to sell
or let, etc.
1899, No. 46,
s. 218.

(b) Nothing in this section contained shall be deemed to limit the power of any such company to make sales of metals, quartz, **ores**, or minerals, or other products or things in the course of such company's business.

(c) Every such company shall, unless the same is expressly negatived by its rules for the time being, have an inherent right to make sales from time to time of such plant or stores as may not be required in connection with the conduct of its business.

3. The annual return made pursuant to section eighty-eight shall, in addition to the particulars required to be set out by subsection three of that section specify particulars of—

- (a) the date when each call made since the date of the last return or in the case of a first return since incorporation was payable;
- (b) the dates since the last return or incorporation when shares forfeited were offered for sale and the place of offer;
- (c) the number of shares sold at each sale of forfeited shares made since the last return or incorporation;
- (d) the number of shares unsold at each offer for sale of forfeited shares made since the last return or incorporation;
- (e) all sales of shares pursuant to subparagraph (vi) of paragraph (k) of subsection one of section forty-four;

but the copy of the annual return filed with the Registrar-General need not include lists of members.

Additional
particulars in
annual return.

SCHEDULE FOUR.

Secs. 27, 46.

FORM OF STATEMENT IN LIEU OF PROSPECTUS TO BE FILED WITH THE REGISTRAR-GENERAL BY A PROPRIETARY COMPANY ON BECOMING A PUBLIC COMPANY.

The Companies Act, 1936.

Statement in lieu of prospectus delivered for registration by
[Insert the name of the Company.]

Pursuant to section forty of the Companies Act, 1936.

Q

SCHEDULE

No. 33, 1936.

SCHEDULE FOUR—*continued.*FORM OF STATEMENT, ETC.—*continued.*

Filed for registration by

The nominal share capital of the Company	...	£	Shares of £ each.
Divided into ...	...	...	” ” ”
Amount (if any) of above capital which consists of redeemable preference shares.			Shares of £ each.
The date on or before which these shares are, or are liable, to be redeemed.			
Names, descriptions and addresses of directors or proposed directors.			Shares.
Amount of shares issued ...	...	...
Amount of commissions paid in connection therewith.			
Amount of discount, if any, allowed on the issue of any shares, or so much thereof as has not been written off at the date of the statement.			
Unless more than one year has elapsed since the date on which the Company was entitled to commence business:—			
Amount of preliminary expenses ...	...	£	Name of promoter.
Amount paid to any promoter ...	...	£	Amount £ .
Consideration for the payment ...	...	£	Consideration:—
If the share capital of the Company is divided into different classes of shares, the right of voting at meetings of the Company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.			
Number and amount of shares and debentures issued within the two years preceding the date of this statement as fully or partly paid up otherwise than for cash or agreed to be so issued at the date of this statement.			1. shares of £ fully paid.
Consideration for the issue of those shares or debentures.			2. shares upon which £ per share credited as paid.
Names and addresses of Vendors of Property—			3. debenture £ .
(a) purchased or acquired by the Company within the two years preceding the date of this statement, or			4. Consideration:—
(b) agreed or proposed to be purchased or acquired by the Company.			
Amount (in cash, shares or debentures) paid or payable to each separate vendor.			Total purchase price £
Amount paid or payable in cash, shares or debentures for any such property, specifying the amount paid or payable for goodwill.			Cash ... £
			Shares ... £
			Debentures ... £
			Goodwill ... £
Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of business or entered into more than two years before the delivery of this statement).			

SCHEDULE

SCHEDULE FOUR—*continued.*FORM OF STATEMENT, ETC.—*continued.*

Time and place at which the contracts or copies thereof may be inspected.
Names and addresses of the auditors of the Company.
Full particulars of the nature and extent of the interest of every director in any property purchased or acquired by the Company within the two years preceding the date of this statement or proposed to be purchased or acquired by the Company or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become or to qualify him as a director, or otherwise for services rendered or to be rendered to the Company by him or by the firm.
Rates of the dividends (if any) paid by the Company in respect of each class of shares in the Company in each of the three financial years immediately preceding the date of this statement or since the incorporation of the Company whichever period is the shorter.
Particulars of the cases in which no dividends have been paid in respect of any class of shares in any of these years.
If any of the unissued shares or debentures are to be applied in the purchase of any business the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the three financial years immediately preceding the date of this statement, provided that in the case of a business which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one year the above requirement shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years, and in any such case the statement shall say how long the business to be acquired has been carried on.

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

Date

.....
.....
.....

NOTE.—In this Form the expression "vendor" includes a vendor as defined in Part III of Schedule Eight to this Act, and the expression "financial year" has the meaning assigned to it in that Part of that Schedule.

SCHEDULE

484 Companies Act.

No. 32, 1936.

SCHEDULE FIVE.

See. 62.

FORM A.

The Companies Act. 1936.

I, the undersigned, being the duly appointed agent of [here state the name of the company or society] do hereby solemnly and sincerely declare that the said company proposes [is] carrying on business or establishing [has established] a place of business in the State of New South Wales.

The name of the agent of the said company or society is [here state full Christian name and Surname].

I am the person named in the memorandum of appointment dated by the Company Limited, a copy of which is filed herewith.

The address of the said agent in the said State is at [here state the city, town, or place where situate, and the name of street and number of building, if any].

The name of the company or society is [here state name].

The place where the said company or society was formed or incorporated is and the situation of its head office is at [state name of street, etc.] And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act, 1900.

Signature—

Declared at this day of , 19 ,
before me,

A Justice of the Peace.

See. 64.

FORM B.

The Companies Act, 1936.

This is to certify that a company [or society] called the formed or incorporated in and carrying on business in the State of New South Wales, did, day of 19 , duly register under Part VI of the Companies Act, 1936.

The name and place of abode or business of the person appointed by the company [or society] as agent to carry on its business in the said State is as follows:—

Name

Place of abode or business.....

The registered office of the said company [or society] is

Given under my hand this day of , 19 .

Registrar-General.

SCHEDULE

SCHEDULE SIX.

The Companies Act, 1936.

Sec. 88.

FORM OF ANNUAL RETURN OF A COMPANY HAVING A SHARE CAPITAL.

Annual Return of the **Company, Limited,**
 made up to and as upon the **day of 19**
 (being the date of [or on the fourteenth day after the date of] the
 first or only ordinary general meeting of 19).

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

Summary of Share Capital and Shares.

Nominal Share Capital £	divided into*	shares of £	shares of each.
Total number of shares taken up* to the day of 19 being the date of the return (which number must agree with the total shown in the list as held by existing members).			
Number of shares issued subject to payment wholly in cash.			
Number of shares issued as fully paid up otherwise than in cash.			
Number of shares issued as partly paid up to the extent of per share otherwise than in cash.			
†Number of shares (if any) issued at a discount.			
Total amount of discount on the issue of shares which has not been written off at the date of this return £			
‡There has been called up on each of shares.			
‡There has been called up on each of shares.			
‡There has been called up on each of shares.			
§Total amount of calls received, including payments on application and allotment.			
Total amount (if any) agreed to be considered as paid on shares which have been issued as fully paid up otherwise than in cash.			
Total amount (if any) agreed to be considered as paid on shares which have been issued as partly paid up to the extent of per share otherwise than in cash.			
Total amount of calls unpaid £			
Total amount of the sums (if any) paid by way of commission in respect of any shares or debentures or allowed by way of discount in respect of any debentures since the date of the last return.			
Total amount paid (if any) on shares forfeited .. £			
Total number of shares forfeited £			
Total amount of shares for which share warrants issued before the commencement of the Companies Act, 1936, are outstanding £			

SCHEDULE

No. 33, 1936.

SCHEDULE SIX—*continued.*

Total amount of share warrants surrendered since the date of the last return or incorporation as the case may be.	Surrendered £
Total amount of the indebtedness of the company in respect of all mortgages, charges and liens whether they are or are not such as are required to be registered under the Companies Act, 1936, with the Registrar-General or under any Act repealed by that Act, with the Registrar of Joint Stock Companies.	£

*Where there are shares of different kinds or amounts (e.g., Preference and Ordinary £1 and 1s.) state the number and nominal values separately.

† If the shares are of different kinds, state them separately.

‡ Where various amounts have been called, or there are shares of different kinds, state them separately.

§ Include what has been received on forfeited as well as on existing shares.

NOTE.—Where workers' shares have been issued, abstract of particulars set out in section one hundred and sixty-eight should be attached.

In the case of a No-Liability Company, the return should also set out the particulars specified in clause 3 of Schedule Three to the Companies Act, 1936.

Copy of last audited Balance-sheet of the Company.

NOTE.—Except where the company is a proprietary company within the meaning of section thirty-seven of the Companies Act, 1936, this return must include a written copy, certified by a director or by the manager or secretary of the company to be a true copy, of the last balance-sheet which has been audited by the company's auditors (including every document required by law to be annexed or attached thereto), together with a copy of the report of the auditors thereon (so certified), and if any such balance-sheet is in a foreign language there must also be annexed to it a translation thereof in English certified in the prescribed manner to be a correct translation. If the last balance-sheet did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance-sheets there must 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 must be stated thereon.

Sec. 91.

Proprietary Company.

Certificates to be sent by a Proprietary Company with Annual Return.

A. "I certify that the Company has not since the date of the *last annual return issued any invitation to the public to subscribe for any shares or debentures of the Company or to deposit money with the Company."

(Signature)

(State whether Director or Secretary.)

B.

*In the case of the first Annual Return strike out the words "last Annual Return" and substitute therefor the words "Incorporation of the Company."

B. Should the number of members of the Company exceed 50 the following certificate is also required:—

No. 33, 1936.
Sec. 91.

"I certify that the excess of members of the Company above 50 consists wholly of persons who are in the employment of the Company and/or of persons who having been formerly in the employment of the Company were while in such employment, and have continued after the determination of such employment to be, members of the Company."

(Signature)

(State whether Director or Secretary.)

NOTE.—Where the permissible number of members is limited to one hundred (see section 37 (3)) an appropriate alteration should be made in the certificate.

NOTE.—Banking companies must add a list of all their places of business. All companies must attach the certificate of their auditors as to compliance with the Unclaimed Moneys Act, 1917.

The return must be signed at the end by a director or secretary of the company.

Filed by

Particulars of the *directors of the Company, Limited, at the date of the annual return.

Sec. 92.

The present Christian Name or Names and Surname.	Any former Christian Name or Names or Surname.	Nationality.	Nationality of origin (if other than the present nationality).	Usual residential address.	‡ Other business occupation, if any. If none, state so.

* "Director" includes any person who occupies the position of a Director by whatever name called, and any person in accordance with whose directions or instructions the Directors of a Company are accustomed to act.

† In the case of a Corporation its corporate name and registered or principal office should be shown.

‡ In the case of an individual who has no business occupation, but holds any other directorship or directorships particulars of that directorship or of some one of those directorships must be entered.

LIST

Company Limited on the 19th day of 19th, and of Persons who have held Shares therein at any time since the date of the last Return, or (in the case of the first Return) of the incorporation of the Company, showing their Names and Addresses, and an Account of the Shares so held.

N.B.—If the names in this list are not arranged in alphabetical order, an index sufficient to enable the name of any person in the list to be readily found must be annexed to this list.

(Signature)

(State whether Director or Manager or Secretary)

* The aggregate Number of Shares held, and not the Distinctive Numbers, must be stated, and the column must be added up throughout so as to make one total to agree with that stated in the Summary to have been taken up.

† When the Shares are of different classes these columns should be subdivided so that the number of each class held, or transferred, may be shown separately. Where any Shares have been converted into Stock held by each member must be shown.

* The date of Registration of each Transfer should be given as well as the Number of Shares transferred on each date. The particulars should be placed opposite the name of the Transferor, and not opposite that of the Transferee, but the name of the Transferee may be inserted

“Remarks” column immediately opposite the particulars of each Transfer.
Note.—In the case of a No-Liability Company the filing of a copy of this list with the Registrar-General is not required.

SCHEDULE

SCHEDULE SEVEN.

The Companies Act, 1936.

FORM OF STATEMENT TO BE PUBLISHED BY BANKING AND INSURANCE COMPANIES.

The information in this Statement is compiled as on the first day of January (or July), 19

* The share capital of the company is , divided into shares of each.

The number of shares issued is

Calls to the amount of pounds per share have been made, under which the sum of pounds has been received.

The liabilities of the company are—

Debts owing to sundry persons by the company—
 On judgment, £
 On specialty, £
 On notes or bills, £
 On simple contracts, £
 On estimated liabilities, £

The assets of the company are—

Government securities [*stating them*]
 Bills of exchange and promissory notes, £
 Cash at the bankers, £
 Other securities, £

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

SCHEDULE EIGHT.

The Companies Act, 1936.

PART I.—MATTERS REQUIRED TO BE STATED IN PROSPECTUS.

1. Except where the prospectus is published as a newspaper advertisement, the contents of the memorandum, with the names, descriptions, and addresses of the signatories, and the number of shares subscribed for by them respectively.
2. The number of founders, or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company.
3. The number of shares, if any, fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors.
4. The names, descriptions, and addresses of the directors or proposed directors.
5. The names, descriptions, and addresses of the secretary and solicitors of the company or of the proposed secretary and solicitors.

6.

No. 33, 1936.

See also
s. 142 (1). 6. Where shares are offered to the public for subscription particulars as to—

- (a) the minimum amount which, in the opinion of the directors, must be raised by the issue of those shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters:—
 - (i) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;
 - (ii) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company;
 - (iii) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters;
 - (iv) working capital; and
- (b) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.

7. The amount payable on application and allotment on each share, and, in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, the amount actually allotted, and the amount, if any, paid on the shares so allotted.

8. The number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid-up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued.

9. The names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares, or debentures, to the vendor, and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor.

10. The amount, if any, paid or payable as purchase money in cash, shares, or debentures, for any such property as aforesaid, specifying the amount, if any, payable for goodwill.

11. The amount, if any, paid within the two preceding years, or payable, as commission (but not including commission to sub-underwriters) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the company, or the rate of any such commission.

12. The amount or estimated amount of preliminary expenses.
13. The amount paid within the two preceding years or intended to be paid to any promoter, and the consideration for any such payment.
14. The dates of and parties to every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than two years before the date of issue of the prospectus, and a reasonable time and place at which any such material contract or a copy thereof may be inspected.
15. The names and addresses of the auditors, if any, of the company.
16. Full particulars of the nature and extent of the interest, if any, of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as a director, or, otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.
17. If the prospectus invites the public to subscribe for shares in the company and the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.
18. In the case of a company which has been carrying on business, or of a business which has been carried on for less than three years, the length of time during which the business of the company or the business to be acquired, as the case may be, has been carried on.

PART II.—REPORTS TO BE SET OUT IN PROSPECTUS.

1. A report by the auditors of the company with respect to the profits of the company in respect of each of the three financial years immediately preceding the issue of the prospectus, and with respect to the rates of the dividends, if any, paid by the company in respect of each class of shares in the company in respect of each of the said three years, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years, and, if no accounts have been made up in respect of any part of the period of three years ending on a date three months before the issue of the prospectus, containing a statement of that fact.

2. If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in the purchase of any business, a report made by accountants who shall be named in the prospectus upon the profits of the business in respect of each of the three financial years immediately preceding the issue of the prospectus.

PART

No. 83, 1936. **PART III.—PROVISIONS APPLYING TO PARTS I AND II OF SCHEDULE.**

1. The provisions of this Schedule with respect to the memorandum and the qualification, remuneration and interest of directors, the names, descriptions and addresses of directors or proposed directors, and the amount or estimated amount of the preliminary expenses, shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

2. Every person shall for the purposes of this Schedule be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—

- (a) the purchase money is not fully paid at the date of the issue of the prospectus;
- (b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus;
- (c) the contract depends for its validity or fulfilment on the result of that issue.

3. Where any property to be acquired by the company is to be taken on lease, this Schedule shall have effect as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.

4. For the purposes of paragraph nine of Part I of this Schedule where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors.

5. If in the case of a company which has been carrying on business, or of a business which has been carried on for less than three years, the accounts of the company or business have only been made up in respect of two years or one year, Part II of this Schedule shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years.

6. The expression "financial year" in Part II of this Schedule means the year in respect of which the accounts of the company or of the business, as the case may be, are made up, and where by reason of any alteration of the date on which the financial year of the company or business terminates the accounts of the company or business have been made up for a period greater or less than a year, that greater or less period shall for the purpose of the said Part of this Schedule be deemed to be a financial year.

SCHEDULE NINE.

FORM OF STATEMENT IN LIEU OF PROSPECTUS TO BE FILED WITHIN
REGISTRAR-GENERAL BY A COMPANY WHICH DOES NOT ISSUE A
PROSPECTUS OR WHICH DOES NOT GO TO ALLOTMENT ON A
PROSPECTUS ISSUED.

The Companies Act, 1936.

Statement in lieu of prospectus filed for registration by

[Insert the name of the Company.]

Pursuant to section one hundred and forty-three of the Companies
Act, 1936. Filed for registration by

The nominal share capital of the Company	£	Shares of £ each.
Divided into ..	..	Shares of £ each.
" "	" "	" "
" "	" "	" "
Amount (if any) of above capital which consists of redeemable preference shares.		
The date on or before which these shares are, or are liable, to be redeemed.		
Names, descriptions and addresses of directors or proposed directors.		
Names, descriptions and addresses of the secretary and solicitors or proposed secretary and solicitors.		
If the share capital of the Company is divided into different classes of shares, the right of voting at meetings of the Company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.		
Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash.		1. shares of £ fully paid.
The consideration for the intended issue of those shares and debentures.		2. shares upon which £ per share credited as paid. 3. debenture £
		4. Consideration:—
Names and addresses of vendors of property purchased or acquired, or proposed to be pur- chased or acquired by the Company.		
Amount (in cash, shares, or debentures) payable to each separate vendor.		
Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill.		Total purchase price £ Cash ... £ Shares ... £ Debentures ... £ Goodwill ... £
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the Company; or		Amount paid. " payable.
Rate of the commission ...	per cent.	
The number of shares, if any, which persons have agreed for a commission to subscribe absolutely.		

SCHEDULE

No. 33, 1936.

SCHEDULE NINE—*continued.*FORM OF STATEMENT, ETC.—*continued.*

Estimated amount of preliminary expenses ...	£	
Amount paid or intended to be paid to any promoter.		Name of promoter.
Consideration for the payment ...	£	Amount £
Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the Company or entered into more than two years before the delivery of this statement).		Consideration :—
Time and place at which the contracts or copies copies thereof may be inspected.		
Names and addresses of the auditors of the Company (if any).		
Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the Company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the Company.		
If it is proposed to acquire any business, the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the three financial years immediately preceding the date of this statement provided that in the case of a business which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one year the above requirement shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years, and in any such case the statement shall say how long the business to be acquired has been carried on.		

(Signatures of the persons above-named as directors or proposed directors, or of their agents authorised in writing.)

Date

NOTE.—In this Schedule the expression “vendor” includes a vendor as defined in Part III of Schedule Eight to this Act and the expression “financial year” has the meaning assigned to it in that Part of that Schedule.

SCHEDULE

SCHEDULE TEN.

The Companies Act, 1936.

PROVISIONS WHICH DO NOT APPLY IN THE CASE OF A WINDING UP
SUBJECT TO SUPERVISION OF THE COURT.

Power of court to appoint liquidator	s. 220
Appointment and powers of provisional liquidator ..	s. 221
Statement of companies' affairs to be submitted to liquidator	s. 222
Report of liquidator	s. 223
Appointment, etc., of liquidators	s. 226
Requirements to be observed by liquidators	s. 227
General provisions as to liquidators	s. 228
Exercise and control of liquidators' powers	s. 232
Books to be kept by liquidator	s. 233
Payments of liquidator into bank	s. 234
Control of court over liquidator	s. 235
Liquidator to answer inquiries, etc.	s. 236
Release of liquidators	s. 237
Meeting of creditors and contributories to determine whether committee of inspection shall be appointed	s. 238
Constitution and proceedings of committee of inspection	s. 239
Powers of court where no committee of inspection ..	s. 240
Appointment of special manager	s. 248
Power to order public examination of promoters, directors, etc.	s. 254
Power to restrain fraudulent persons from managing com- panies	s. 255
Delegation to liquidator of certain powers of court	s. 257 (2)
Power to appoint liquidator as receiver for debenture holders or creditors	s. 336

SCHEDULE ELEVEN.

The Companies Act, 1936.

Provisions referred to in section three hundred and fifty-three
of the Act.

Provisions relating to—

- Sec. 7.—Administration of Act.
- Sec. 30.—Conclusiveness of certificate of incorporation.
- Sec. 62.—Documents, etc., to be delivered to Registrar-General by
foreign companies carrying on business in New South Wales.
- Sec. 67.—Return to be filed with Registrar-General when
documents, etc., altered.

[No. 33, 1936.]

Sec. 68.—Balance-sheet of foreign companies carrying on business in New South Wales.

Sec. 69.—Obligation to state name of company, etc.

Sec. 72.—Notice of discontinuance of business.

Sec. 77.—Restrictions on commencement of business.

Sec. 88 (3) (l) (m).—Particulars as to directors and indebtedness of the company.

Sec. 89.—Particulars as to directors and statement to be annexed to return.

Sec. 91.—Certificate to be sent by proprietary company with annual return.

Sec. 93.—Statutory meeting and statutory report.

Sec. 115.—Auditor's report and right to information and explanations.

Sec. 121.—Restrictions on appointment or advertisement of director.

Sec. 137.—Specific requirements as to particulars in prospectus.

Sec. 143.—Prohibition of allotment in certain cases unless statement in lieu of prospectus filed with Registrar-General.

Sec. 145.—Return as to allotments.

Sec. 185.—Registration of charges created by company registered in New South Wales.

Sec. 186.—Duty of company to register charges created by company.

Sec. 198.—Application of Part IX to companies incorporated outside New South Wales.

Sec. 294.—Notice by liquidator of his appointment.

Sec. 339.—Filing with Registrar-General of accounts of receivers and managers.

Sec. 377.

SCHEDULE TWELVE.

The Companies Act, 1936.

Enactments referred to in section three hundred and seventy-seven.

Sec. 17 (3).—As to filing with Registrar-General notice of an increase in number of its members by unlimited company or company limited by guarantee.

Sec. 40.—As to filing statement in lieu of prospectus by a proprietary company which has altered its memorandum or articles in certain respects.

Sec. 62.—As to registration of foreign company.

Sec. 63.—As to notice of situation of registered office of a foreign company and change thereof.

Sec. 67.—As to return as to alteration in constitution, directors, persons to accept service, and registered office.

Sec. 68.—As to copy of balance-sheet of foreign company.

Sec. 72.—As to notice of discontinuance of business of a foreign company.

Sec. 75.

No. 88, 1936,

Sec. 75.—As to notice of situation of registered office or any change thereof.

Sec. 77 (1) (c) and (2) (c).—As to filing statutory declarations that the provisions of paragraphs (a) and (b) of subsection one or the provisions of paragraph (b) of subsection two of section seventy-seven have been complied with.

Sec. 78.—As to notice of conversion of shares into stock.

Sec. 83.—As to notice of rectification of register of members.

Sec. 86 (2).—As to notice of situation of office where a branch register is kept and any change in its situation or of its discontinuance.

Sec. 90.—As to copy of annual returns.

Sec. 91.—As to certificates to accompany copy of annual return of proprietary company.

Sec. 93.—As to filing a copy of the statutory report of a company.

Sec. 98.—As to registration of resolutions or agreements.

Sec. 121.—As to—
(a) filing of consent to act as a director;
(b) filing of undertaking by a director to take and pay for qualification shares;
(c) filing of statutory declaration by a director as to number of shares registered in his name;
(d) filing of list of persons who have consented to be directors.

Sec. 125.—As to filing of return of particulars in the register of directors.

Sec. 133 (3).—As to filing office copy order made pursuant to subsection two of section one hundred and thirty-three.

Sec. 134.—As to filing office copy of an order made pursuant to subsection one of section one hundred and thirty-four.

Sec. 136.—As to dating and filing of a copy of prospectus.

Sec. 143.—As to filing of statement in lieu of prospectus.

Sec. 145.—As to filing of return of allotments or contracts pursuant to subsection one of section one hundred and forty-five or of the prescribed particulars required by subsection two of that section.

Sec. 146.—As to filing of statement relating to the amount or rate per centum of commission paid to any person in consideration of his agreement to subscribe for shares or for procuring or agreeing to procure subscriptions for shares.

Sec. 154.—As to filing notice specifying shares consolidated, divided, converted, subdivided, redeemed or cancelled or the stock reconverted.

Sec. 155.—As to filing notice of increase in capital and as to forwarding to him a printed copy of the resolution authorising the increase.

No. 33, 1936.

Sec. 164.—As to filing an office copy of an order disallowing or confirming a variation of the rights attached to a class of shares.

Sec. 168.—As to the filing of copies or abstracts of prescribed particulars of workers' shares issued.

Secs. 185-186.—As to filing for registration instruments creating charges or certified copies thereof, etc.

As to filing of a deed or particulars of issue of debentures referred to in subsection seven of section one hundred and eighty-five and as to filing the particulars referred to in subsection eight of that section.

Sec. 191.—As to filing of orders appointing receivers or managers or of the appointment of a receiver or manager under an instrument, or notice of a receiver or manager ceasing to act as such.

Sec. 217.—As to filing a copy of a winding-up order.

Sec. 227.—As to filing notice of the appointment of liquidator.

Sec. 259.—As to filing an office copy order dissolving a company.

Sec. 265.—As to filing of a statutory declaration of solvency in case of proposal to wind up a company voluntarily.

Sec. 271.—As to filing with the Registrar-General a copy of final account and as to filing an office copy order deferring the date of dissolution of a company.

Sec. 280.—As to filing a copy of final account and return of holding of meetings and of their dates or a return mentioned in proviso to subsection three of section two hundred and eighty and as to filing an office copy order deferring the date of dissolution of a company.

Sec. 294.—As to filing a notice of the appointment of a liquidator.

Sec. 316.—As to filing statements and accounts in pending liquidations.

Sec. 322.—As to filing with the Registrar-General an office copy of an order declaring the dissolution of a company void.

Sec. 323.—As to filing copy order restoring name of company to register.

Sec. 339.—As to filing of abstract of the receipts and payments of receivers and managers appointed under the powers contained in any instrument.

Sec. 341.—As to filing of a copy of a prospectus of a foreign company or of a statement in lieu of a prospectus relating to the offer for sale of debentures or shares.

Sec. 367.—As to the attaching to the annual return of a company of the certificate of the auditor relating to the Unclaimed Moneys Act, 1917.

Generally.—

Generally.—As to any matter or thing required by this Act, or the regulations or rules made thereunder, or by any Act repealed by this Act or any regulation or rule made thereunder, to be done by any company director, officer, auditor, liquidator, receiver or manager in the office of the Registrar-General with regard to a company or its affairs.

SCHEDULE THIRTEEN.

Sects. 6, 880.

PART I.

Enactments referred to in paragraph (b) of subsection one of section three hundred and eighty.

- Sec. 7 (3) (6).—Relating to administration of Act by Registrar-General and returns to be made to Minister.
- Sec. 15 (6).—Form of certificate of Registrar-General.
- Sec. 29 (2).—Form of license.
- Sec. 32 (3).—Form of notice.
- Sec. 34 (2).—Application for license to dispense with use of "Limited."
- Sec. 44 (1) (1).—Form of declaration and certificate.
- Sec. 53.—Form of certificate of registration of company pursuant to Part V.
- Sec. 62.—Verification of copy of memorandum of appointment of agent by foreign company.
- Sec. 63.—Time for filing notice of situation, etc., of registered office.
- Sec. 67.—Return to Registrar-General of alteration of constitution, etc., of foreign company.
- Sec. 74.—Manner of certification of copies or translations of certain documents.
- Sec. 75.—Forms of notices as to company's office and changes therein.
- Sec. 77.—Forms of declaration to be filed prior to commencement of business.
- Sec. 89.—Form of annual return by company not having a share capital.
- Sec. 90.—Manner of certification of translations of balance-sheets.
- Sec. 125 (2).—Form of return as to directors, etc.
- Sec. 145 (2).—Particulars as to contracts in respect of which shares are allotted.
- Sec. 146 (1).—Form of statement as to commission to be paid in certain cases.
- Sec. 155 (2).—Particulars to be included in notice to Registrar-General of increase of share capital.
- Sec. 161.—Form of certificate by Registrar-General as to and matters relating to registration of order and minute of reduction of capital.

Sec. 168.

No. 33, 1936.

Sec. 168.—Form of abstract of particulars as to workers' shares to be filed with the Registrar-General with annual return.

Secs. 185, 186.—Particulars of charges created by companies to be filed with the Registrar-General pursuant to these sections and matters in relation thereto.

Sec. 187.—Form of register of charges to be kept by Registrar-General, and form of index.

Sec. 191.—Form of notice of appointment of receiver or manager and of ceasing to act.

Sec. 194 (2).—Particulars of entries referred to.

Sec. 265.—Form of declaration referred to in this section.

Sec. 271.—Forms of returns to be made under this section in members' voluntary winding-up.

Sec. 280.—Forms of returns to be made under this section in creditors' voluntary winding-up.

Sec. 294.—Form of notice of appointment of liquidator.

Sec. 316.—Information with regard to pending liquidations to be filed by liquidators with Registrar-General, etc., times at which particulars are to be filed, forms of statement, particulars to be furnished, form of account and statement, etc.

Sec. 317.—Particulars of payments to liquidators' unclaimed moneys account to be furnished to Colonial Treasurer and the officer to give receipts for such moneys.

Sec. 339.—Form of abstract or account to be filed with the Registrar-General by receivers and managers.

Sec. 341.—Matters relating to registration of prospectus of foreign company.

Sec. 342 (1).—Manner of certifying translation of matter in foreign language.

Sec. 352 (2).—Authentication of documents to be filed or lodged.

Sec. 367.—Form of auditor's certificate relating to Unclaimed Moneys Act, 1917.

Sec. 368.—Fees to be paid to Registrar-General for registrations, etc.

Sec. 369.—Fees to be paid to Registrar-General for inspection, etc., of documents.

PART II.

Enactments referred to in paragraph (b) of subsection two of section three hundred and eighty.

Sec. 7 (6).—Returns to be made to Minister by officers of the court.

Secs. 15 and 37 (7).—Application to confirm alteration of objects and matters incidental thereto.

Sec. 39.

Sec. 39.—Application to court to determine whether company registered as proprietary is properly so registered.

Sec. 40.—Application for relief from the effect of default in complying with provisions of section thirty-seven.

Sec. 58.—Application to confirm alteration of constitution of company not formed under Act.

Sec. 59.—Applications to stay or restrain proceedings.

Sec. 60.—Application for leave to proceed after winding-up order made against company not formed under Act or any contributory.

Sec. 71.—Application to wind up foreign company.

Sec. 81 (5).—Application to compel inspection of register, etc.

Sec. 83.—Application to rectify register of members.

Sec. 92 (3).—Application to call meetings.

Sec. 95.—Application for order that meeting of company be summoned.

Sec. 101 (4).—Application to compel inspection of minute book.

Sec. 102 (5).—Application for order for inspection by accountant.

Sec. 116.—Form of summons by inspector and enquiry as to refusal to produce books and documents to inspector.

Sec. 125 (6).—Application for order of inspection of register of directors.

Sec. 133.—Application for order for summons of meetings of creditors or members as to proposed compromise or arrangement, and for sanctioning same.

Sec. 135 (1).—Form of notice to dissenting shareholders, application by dissenting shareholders, etc., and application by company to authorise notice to dissenting shareholders.

Sec. 145 (3).—Application for extension of time for filing contracts relating to allotment of shares as fully or partly paid otherwise than in cash.

Sec. 150.—Application for sanction of resolution for issue of shares at a discount and for extension of time for such issue.

Sec. 157.—Application for sanction to pay interest on share capital expended on temporarily unproductive works, and as to rate of interest which may be paid out of capital.

Secs. 159-162.—Application for confirmation of resolution for reduction of share capital and matters relating thereto.

Sec. 164.—Application for cancellation of variation of rights of holders of special classes of shares.

Sec. 169 (5).—Application to compel inspection of register of debenture holders or to direct sending of copies.

Sec. 179.—Application for order to make good default as to issue of share certificate, etc.

Sec. 190.—Application for rectification of register of charges.

Sec. 197.—Application for order for inspection of copies of charges or of register of charges.

Sec. 207 (2).—Delegation of powers of Master to other officers.

Sec. 217.—By whom copy winding-up order to be forwarded to Registrar-General.

No. 33, 1936.

- Sec. 222.—Form of statement and fee for inspection.
- Sec. 227.—Security to be given by liquidator.
- Sec. 232.—Application for directions by liquidator and for reversal or modification of act or decision of liquidator.
- Sec. 233.—Manner of keeping books by liquidator.
- Sec. 234.—Manner and times of payment by liquidator of moneys to bank.
- Sec. 248.—Application for appointment of special manager.
- Sec. 253.—Procedure under, also scale of witnesses' expenses and conduct money payable to persons examined, by persons seeking the examination.
- Sec. 257.—Matters relating to delegation to liquidators of powers of court.
- Sec. 259.—Application for order for dissolution.
- Sec. 293.—As to exclusion of section two hundred and thirty-nine.
- Sec. 307 (1).—Application for declaration of personal liability.
- Sec. 307 (4).—Application for leave to be a director, etc., where disqualification order has been made.
- Sec. 309.—Application as to prosecutions of delinquent officers and members of company.
- Sec. 311.—Application to review remuneration of liquidator.
- Sec. 312.—Application to enforce duties of liquidator.
- Sec. 315 (3).—Postponement of destruction of books.
- Sec. 316 (7).—Procedure under.
- Sec. 317 (2).—Procedure under.
- Sec. 317 (5), (6).—Application relating to unclaimed or undistributed assets, manner of appeal from orders made thereon.
- Sec. 322.—Application to declare dissolution of company void.
- Sec. 323.—Application for order for restoration of name of company to the register.
- Sec. 326.—Method of dealing with surplus in hands of Registrar-General arising from disposal of assets of dissolved company.
- Sec. 343.—Manner of appeal from order avoiding contract made under this section.
- Sec. 364.—Application to enforce making of returns.
- Sec. 379.—Application to court for relief.