

COMPANIES (AMENDMENT) ACT.

Act No. 21, 1966.

Elizabeth II, No. 21, 1966 An Act to amend the law relating to the registration of company prospectuses and the official management of companies; for this and other purposes to amend the Companies Act, 1961-1965; and for purposes connected therewith. [Assented to, 13th April, 1966.]

BE it enacted by the Queen'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 :—

Short title, commencement and citation.

1. (1) This Act may be cited as the "Companies (Amendment) Act, 1966".

(2) In this Act the Companies Act, 1961, as amended by subsequent Acts and by orders of the Governor under section seven of the Companies Act, 1961, as so amended, is referred to as the Principal Act.

(3)

(3) This Act, section four excepted, shall commence No. 21, 1966 upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

(4) The Principal Act, as amended by this Act, may be cited as the Companies Act, 1961-1966.

2. (1) Where immediately before the commencement of Transition, this Act a company is under official management the company shall, subject to the provisions of this Act, continue under official management—

- (a) for a period of two years from the day on which it was placed under official management; or
- (b) for a period of six months from the commencement of this Act,

whichever period last expires, unless the period of official management is sooner terminated or is extended under section 203C of the Principal Act, as amended by this Act.

(2) For the purposes of subsection (1) of this section the day on which a company is placed under official management shall be the day on which a meeting of creditors of the company called for the purpose of placing the company under official management and appointing an official manager passed a special resolution under section two hundred and one of the Principal Act as in force immediately before the commencement of this Act determining that the company shall be under the sole management of an official manager.

(3) Where before the commencement of this Act a meeting of creditors of a company has been called for the purpose of placing the company under official management and appointing an official manager, and before that commencement a special resolution under section two hundred and one of the Principal Act as in force immediately before

that

No. 21, 1966 that commencement determining that the company shall be under the sole management of an official manager has not been passed by the creditors of the company, the meeting shall be deemed not to have been duly called.

(4) The purported appointment of a person to a committee of management under Part IX of the Principal Act as in force immediately before the commencement of this Act shall be and shall be deemed always to have been a valid and effective appointment if the appointment would be a valid and effective appointment under Part IX of the Principal Act, as amended by this Act.

(5) All persons appointed under or by virtue of Part IX of the Principal Act and holding office immediately before the commencement of this Act shall be deemed to have been appointed and to hold office under and by virtue of the Principal Act, as amended by this Act, if they could have been appointed and could have held office had the Principal Act, as so amended, been in force at the time of the appointment.

(6) Any matter or thing done under and in accordance with Part IX of the Principal Act and in force and operative immediately before the commencement of this Act shall be deemed to have been done and to have force and effect under and in accordance with the Principal Act, as amended by this Act, if it could have been done had the Principal Act, as so amended, been in force at the time that matter or thing was done.

(7) Except where otherwise expressly provided the provisions of the Principal Act, as amended by this Act, shall apply to and in relation to a company placed under official management before or after the commencement of this Act.

Amendment
of Act No.
71, 1961.

Sec. 5.
(Interpreta-
tion.)

3. The Principal Act is amended—

(a) (i) by omitting from paragraph (b) of the definition of "Officer" in subsection one of section five the word "and" where secondly occurring;
(ii)

(ii) by inserting next after the same paragraph the No. 21, 1966 following new paragraph :—

(ba) any official manager or deputy official manager of the company appointed under the provisions of Part IX; and

(b) (i) by omitting from paragraph (b) of subsection Sec. 42. (2) of section forty-two the word “and” where (Registration of prospectus.) secondly occurring;

(ii) by inserting next after paragraph (c) of the same subsection the following word and new paragraph :—

; and

(d) the Registrar is of the opinion that the prospectus does not contain any statement or matter which is misleading in the form or context in which it is included (except where, in the case of a prospectus of a corporation which is a foreign company incorporated or to be incorporated in another State or Territory of the Commonwealth, the prospectus has been registered or is acceptable for registration by the Registrar of Companies in that other State or Territory).

(c) by omitting Part IX and by inserting in lieu thereof Subst. Part IX. the following Part :—

PART IX.—OFFICIAL MANAGEMENT.

198. (1) In this Part— “Special notice” in relation to a meeting of creditors of a company means notice of the meeting posted to each of the creditors not less than fourteen days nor more than twenty-one days before the date of the meeting. Interpretation.

“Special resolution” in relation to a meeting of creditors of a company means a resolution passed by a majority of the creditors voting either

No. 21, 1966

either in person or by proxy on the resolution, being a majority consisting of creditors representing at least three-fourths in value and one-half in number of creditors entitled to vote and so voting on the resolution, every creditor to whom the company owes a debt of less than twenty dollars being reckoned in value only for the purpose of calculating such majority.

(2) For the purposes of any special resolution required under this Part to be passed at a meeting of creditors of a company, no corporation that is deemed by virtue of subsection (5) of section six to be related to the company shall be entitled to vote on such resolution.

(3) Subject to the provisions of subsection (2) of this section nothing in this Part shall prejudice or otherwise affect the rights of any secured creditor of the company.

Power of
company to
call meet-
ing of
creditors
to appoint
official
manager.

199. (1) Where it is resolved by the majority of the directors of a company present at a meeting of the directors specially called for that purpose that the company is unable to pay its debts as and when they become due and payable, the company may, and, where the company is so requested in writing by a creditor of the company who has a judgment against the company unsatisfied to the extent of not less than five hundred dollars the company shall, by giving notice thereof in accordance with subsection (9) of this section, within forty-two days of the passing of the resolution of the directors or the receipt by the company of the request by the judgment creditor or, where in the opinion of the Registrar the company would not be able properly to comply with the requirements of this section, within such further period as the Registrar allows, hold a meeting of its creditors

for

for the purpose of placing the company under **No. 21, 1966** official management and appointing an official manager of the company.

(2) If default is made in complying with subsection (1) of this section the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty : Four hundred dollars. **Default**
penalty : One hundred dollars.

(3) The company shall prepare a statement of the affairs of the company in the prescribed form made up to a date not earlier than the date of the passing of the resolution of the directors or the receipt by the company of the request by the judgment creditor under subsection (1) of this section.

(4) Subject to subsection (7) of this section, a company shall be deemed not to have prepared a statement of its affairs in accordance with subsection (3) of this section unless each director of the company has furnished to the company a certificate under his hand certifying whether the statement does or does not, to the best of his knowledge, information and belief, give a true and fair view of the state of affairs of the company as at the date to which it is made up.

(5) Where a director certifies that the statement does not give a true and fair view of the state of affairs of the company, he shall also state in the certificate the grounds on which he formed that opinion.

(6) A director of a company shall not furnish a certificate concerning a statement of the affairs of a company for the purpose of subsection (4) of this section unless he has made such inquiries as are reasonably necessary to determine whether

the

152 **Companies (Amendment) Act.**

No. 21, 1966

the statement does or does not give a true and fair view of the state of affairs of the company as at the date to which it is made up.

(7) Where the Registrar is satisfied that it is impracticable for a company to obtain the certificate of a director of the company, the Registrar may dispense with the obtaining of the certificate from that director.

(8) A company that and every director who fails to comply or to take all reasonable steps to secure compliance with any provision of subsection (3), (5) or (6) of this section shall be guilty of an offence against this Act.

Penalty : Four hundred dollars. Default penalty : One hundred dollars.

(9) Notice of the meeting shall be given to the creditors of the company by means of a notice in the prescribed form—

(a) posted to each of the creditors; and

(b) published at least once in a daily newspaper circulating generally throughout the State,

not less than ten days nor more than twenty-one days before the day fixed for the holding of the meeting.

(10) The company shall attach to every notice posted to the creditors under subsection (9) of this section—

(a) a summary of the affairs of the company in accordance with the prescribed form;

(b) a notice that the statement required to be prepared by the company under subsection (3) of this section is available at the registered office of the company and that a copy of the statement will be posted by return mail to any creditor who requests it or will be handed to any creditor who calls at the office and requests it; and

(c)

(c) a copy of the certificate furnished by each **No. 21, 1966** director of the company in accordance with subsection (4) of this section.

(11) If default is made in complying with subsection (10) of this section, or with any request made under paragraph (b) of that subsection, the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty: Four hundred dollars. Default penalty.

(12) Notwithstanding subsection (10) of this section, the company may attach to every notice posted to the creditors under subsection (9) of this section a complete copy of the statement of affairs of the company required to be prepared by the company under subsection (3) of this section and if the company does so attach the complete copy it will not be required to comply with paragraphs (a) and (b) of subsection (10) of this section.

(13) The meeting shall be called for a time and place convenient to the majority in value of the creditors.

(14) The chairman of the meeting shall be appointed by a resolution of the creditors of the company present at the meeting who are entitled to vote on a special resolution and the chairman so appointed shall at the meeting determine whether the time and place of the meeting are convenient to the majority in value of the creditors and his decision shall be final; but if the chairman decides that the time and place of the meeting are not convenient to that majority, the meeting shall lapse.

(15) Within seven days after the first notice calling the meeting is posted to any creditor, the company shall lodge with the Registrar a copy of that notice and shall attach thereto a certified copy

No. 21, 1966

copy of the statement of affairs of the company required to be prepared by the company under subsection (3) of this section and certified copies of the certificates furnished by the directors under subsection (4) of this section.

Statement
of affairs
of company
to be
submitted
to meeting.

200. (1) At the meeting of creditors of the company called under section one hundred and ninety-nine the directors of the company shall submit to the meeting the statement of affairs of the company required to be prepared by the company under subsection (3) of section one hundred and ninety-nine.

(2) The directors of the company shall appoint one of their number to attend the meeting.

(3) The director so appointed shall attend the meeting and disclose to the meeting the company's affairs and the circumstances leading up to the proposed official management.

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

Penalty : Four hundred dollars.

Power to
adjourn
meeting.

201. (1) A meeting called under section one hundred and ninety-nine may by resolution be adjourned from time to time to a time and date specified in the resolution but shall not be adjourned to a date later than thirty days after the date for which the meeting was called.

(2) Where a meeting is adjourned, the adjourned meeting shall, unless it is otherwise provided by the resolution by which it is adjourned, be held at the same place as the original meeting.

(3) Where a meeting is adjourned to a date later than eight days after the passing of the resolution by which it is so adjourned the company shall cause notice of the time, date and place of the resumption

resumption thereof to be published at least once in No. 21, 1966
a daily newspaper circulating generally throughout
the State at least seven days before the date of that
resumption.

202. (1) Where at a meeting of creditors of a company called under section one hundred and ninety-nine the creditors have passed a resolution to the effect that in their opinion the company is unable to pay its debts as and when they become due and payable but that if the company were placed under official management there would in their opinion be a reasonable probability that it would be able to pay its debts, the creditors may at the meeting by special resolution—

- (a) determine that the company shall be placed under official management for such period commencing on the date of the passing of the resolution and not exceeding two years from that date, as shall be specified in the resolution;
- (b) appoint a person named in the resolution who—
 - (i) has consented in writing to act as official manager of the company;
 - (ii) is not the auditor of the company; and
 - (iii) has furnished to the company a certificate under his own hand that he is neither an undischarged bankrupt nor a person who has made any arrangement or composition with his creditors generally and has not been released from his indebtedness,

to be the official manager of the company during the period of the official management; and

(c)

No. 21, 1966

(c) determine the amount of the salary or remuneration of the official manager or delegate the fixing of the amount to a committee of management appointed under this Part.

(2) Within seven days of the passing of the resolutions referred to in subsection (1) of this section the company shall—

- (a) cause a notice in the prescribed form of the passing of the resolutions to be lodged with the Registrar;
- (b) cause notice that the company has been placed under official management and of the full name of the official manager to be published in a daily newspaper circulating generally throughout the State; and
- (c) send by post to each of the creditors and members of the company a notice in the prescribed form of—
 - (i) the special resolution; and
 - (ii) the right to apply to the Court under section two hundred and eleven.

(3) If default is made in complying with subsection (2) of this section the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty : One hundred dollars. Default penalty.

(4) Any creditor to whom the company owes, or any representative of a group of creditors to whom the company owes collectively, more than ten per centum of the total unsecured debts of the company, may within fourteen days of the appointment of a person as official manager of the company under subsection (1) of this section or subsection (3) of section two hundred and four apply to the Court for the termination of that appointment and if in the opinion of the Court the person so appointed is not suitable for the position the

the Court may make an order terminating his No. 21, 1966 appointment and appointing as official manager a registered company auditor (other than the auditor of the company) who has consented in writing to act as official manager.

(5) Where under subsection (4) of this section the Court has made an order appointing a person to be the official manager of a company the provisions of this Part shall apply to that person as if he had been appointed official manager of the company at a meeting of creditors under subsection (1) of this section as at the date of the order of the Court.

(6) Where the Court makes an order under subsection (4) of this section the person obtaining the order shall—

- (a) within seven days after the making of the order lodge with the Registrar notice in the prescribed form of the making of the order and its date; and
- (b) within seven days of the passing and entering of the order lodge with the Registrar an office copy of the order.

(7) If a person fails to comply with the provisions of subsection (6) of this section he shall be guilty of an offence against this Act.

Penalty : One hundred dollars. Default penalty.

202A. (1) At any meeting of the creditors of a company held under this Part the creditors may determine that a committee of management be appointed for the purposes of this Part. Appointment of committee of management.

(2) A committee of management of a company shall consist of five natural persons, of whom three shall be appointed by the creditors of the company by special resolution and two shall be appointed by the members of the company at a general meeting of the company.

No. 21, 1966

(3) A person shall not be eligible to be appointed a member of a committee of management of a company—

(a) by the creditors of the company, unless he is—

- (i) a creditor of the company;
- (ii) the attorney of a creditor of the company by virtue of a general power of attorney given by the creditor; or
- (iii) a person authorised in writing by a creditor of the company to be a member of the committee of management; or

(b) by the members of the company, unless he is—

- (i) a member of the company;
- (ii) the attorney of a member of the company by virtue of a general power of attorney given by the member; or
- (iii) a person authorised in writing by a member of the company to be a member of the committee of management.

Notice of appointment and address of official manager.

202B. (1) A person who has been appointed official manager of a company shall within fourteen days thereafter lodge with the Registrar notice in the prescribed form of his appointment as official manager and of the situation of his office and, in the event of any change in the situation of his office, shall within fourteen days after the change lodge with the Registrar notice thereof in the prescribed form.

(2) A person shall, within fourteen days after his resignation or removal from office as official manager of a company, lodge with the Registrar notice thereof in the prescribed form.

(3)

(3) If a person fails to comply with any No. 21, 1966 of the provisions of this section he shall be guilty of an offence against this Act.

Penalty : One hundred dollars. Default penalty.

203. (1) Where a special resolution placing a company under official management has been duly passed by the creditors of the company under subsection (1) of section two hundred and two—

- (a) the company shall be under official management for the period specified in the special resolution unless extended or earlier terminated under this Part;
- (b) the directors of the company shall cease to hold office;
- (c) the person appointed official manager of the company shall assume and be responsible for the management of the company and shall perform all of the duties and may perform any of the functions and exercise any of the powers of the directors of the company; and
- (d) the affairs of the company shall be conducted subject to the provisions of this Part.

(2) The official manager shall be chairman of any meeting or adjourned meeting of the company or its creditors which takes place while he holds office as official manager.

203A. (1) Subject to subsection (2) of this section, within two months after the expiration of the period of six months commencing on the date of his appointment as official manager and of each subsequent period of six months or, if the Registrar at any time before the expiration of any such period requires or permits him to do so in respect of a lesser period specified by the Registrar, within two

months

months after the expiration of the period so specified, the official manager of a company shall—

- (a) prepare a statement showing the assets and liabilities of the company as at the last day of the period and a report containing such other information as he thinks necessary to enable the creditors and members of the company to assess the financial position of the company as at the last day of the period; and
- (b) call a meeting of the creditors and members of the company to consider the statement and report so prepared.

(2) Where under subsection (1) of this section the Registrar has required or permitted the preparation of a statement and report at the end of a period of less than six months the next period of six months shall commence at the expiration of that lesser period.

(3) With each statement referred to in subsection (1) of this section the official manager shall furnish a statement signed by him and, where the company is required under this Act to appoint a person to be its auditor, by that auditor, stating whether or not in his or their opinion, as the case requires, the statement is drawn up so as to give a true and fair view of the affairs of the company.

(4) Notice of a meeting called under subsection (1) of this section shall be given to the creditors and the members of the company by advertisement published at least once in a daily newspaper circulating generally throughout the State and the advertisement shall specify the time (being a time not less than fourteen days after the date of publication of the advertisement) place and object of the meeting, and the address at which and the hours between which the statements and report referred to in this section may be inspected.

(5)

(5) Copies of the statements and report No. 21, 1966 referred to in this section shall be kept by the official manager of the company and shall be open to the inspection of any creditor or member of the company at the registered office of the company.

(6) The official manager shall—

- (a) give written notice that the statement has been prepared to every creditor and member of the company when next forwarding any report, notice of meeting, notice of call or dividend relating to the company; and
- (b) in the notice inform creditors and members of the company at what address and between what hours the statement may be inspected.

(7) Within seven days after a meeting is held under subsection (1) of this section the official manager shall lodge with the Registrar a notice in the prescribed form of the holding of the meeting and of its date with copies of the statements and report referred to in this section.

(8) Where the statement referred to in subsection (1) of this section is not accompanied by a statement signed by a registered company auditor, the Registrar may cause the statement referred to in subsection (1) of this section to be audited by a registered company auditor appointed by the Registrar and, for the purposes of the audit, the official manager shall furnish that auditor with such books, vouchers and information as the auditor may require.

(9) The costs of an audit under subsection (8) of this section shall be fixed by the Board and shall be part of the costs of the official management.

(10) An official manager who fails to comply with any provision of this section and any auditor of a company who fails to supply to the official manager at his request the statement that

auditor

auditor is required to provide under subsection (3) of this section shall be guilty of an offence against this Act.

Penalty : One hundred dollars. Default penalty.

**Stay of
proceed-
ings.**

203B. (1) Where a company is under official management, no action or proceedings in any court shall except with the leave of the Court and, if the Court grants leave, in accordance with such terms and conditions as the Court may impose, be commenced or proceeded with against the company until the company ceases to be under official management.

(2) Where a foreign company incorporated in any other State or Territory of the Commonwealth is registered in New South Wales and is placed under official management in the State or Territory of its incorporation no action or proceedings in any court shall except with the leave of the Court and, if the Court grants leave, in accordance with such terms and conditions as the Court may impose, be commenced or proceeded with against the company until the company ceases to be under official management in the State or Territory of its incorporation.

(3) At any time after a company has, in accordance with section one hundred and ninety-nine, called a meeting of its creditors for the purpose of placing the company under official management, and before the passing of a special resolution by the creditors under subsection (1) of section two hundred and two determining that the company be placed under official management, the company or any creditor thereof may, if any action or proceeding against the company is pending, apply to the Court to stay or restrain further proceedings in the action or proceeding, and the Court may stay or restrain the proceedings accordingly on such terms and conditions as it thinks fit.

203c.

203C. (1) Before the period of official management of a company is due to expire, the official manager shall call a meeting of creditors of the company to be held on a day not earlier than three months and not later than one month before the day on which the period is due to expire to consider and, if thought fit, pass a special resolution extending the official management for such further period, not exceeding twelve months, as is specified in the resolution.

Power to extend period of official management.

(2) Where a special resolution extending the period of official management of a company is passed at a meeting called in accordance with this section, the company shall continue under official management during the period specified in the resolution unless earlier terminated under this Part.

(3) The meeting shall be called by the official manager by—

- (a) posting to each of the creditors a notice stating the place, date, time and purpose of the meeting; and
- (b) publishing a copy of the notice at least once in a daily newspaper circulating generally throughout the State,

not less than seven days nor more than fourteen days before the day of the meeting.

(4) The official manager shall, within seven days after the passing of a special resolution under subsection (1) of this section, lodge with the Registrar a copy of that resolution.

204. (1) The appointment of a person as official manager of a company may be determined—

Termination of appointment of official manager.

- (a) by his resignation in writing signed by him and tendered to either—

- (i) a committee of management appointed pursuant to this Part; or
 - (ii)

(ii) a meeting of creditors of the company;

(b) by special resolution of the creditors passed at a meeting of creditors of which special notice stating the purpose of the meeting has been given; or

(c) by an order of the Court.

(2) The appointment of a person as official manager of a company shall be determined by the committee of management or, if there is no committee of management, by the Court on the application of any creditor or member of the company if—

(a) the official manager is bankrupt or has made any arrangement or composition with his creditors generally; or

(b) the official manager is mentally ill or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health; or

(c) having been appointed official manager by an order of the Court under subsection (4) of section two hundred and two he ceases to be a registered company auditor.

(3) Where a vacancy occurs in the office of official manager of a company the committee of management may appoint, or if there is no committee of management a meeting of creditors of the company called for that purpose by any two of their number may by special resolution appoint, as official manager a person who is qualified for appointment as such.

(4) The provisions of paragraph (c) of subsection (1) of section two hundred and three of this Part shall apply to a person appointed official manager under subsection (3) of this section.

205. Notwithstanding the appointment of an No. 21, 1966 official manager of a company and for so long as the company is under official management, the provisions of this Act relating to the appointment and re-appointment of auditors and the rights and duties of auditors shall continue to apply to and in relation to the company, and in the application of those provisions to and in relation to the company any reference therein to the directors of a company shall be read as a reference to the official manager of that company.

Appoint-
ment of
official
manager
not to
affect
appoint-
ment and
duties of
auditor.

206. (1) Subject to the provisions of this Act, Duties of the official manager of a company shall— official manager.

- (a) as soon as may be after his appointment as such 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;
- (b) subject to any direction given pursuant to paragraph (c) of this subsection conduct the business and management of the company in such manner as he may think most economical and most beneficial to the interests of the members and creditors of the company;
- (c) comply with any directions of the creditors of the company that are agreed to by special resolution at any meeting of creditors of which the creditors of the company have been given special notice;
- (d) comply with all requirements of this Act applicable to the company or the directors of the company relating to the keeping of accounts and the lodging of annual returns and perform all such other duties as are so applicable and are imposed on a company or on the directors of a company by or under this Act;

(e)

166 Companies (Amendment) Act.

No. 21, 1966

(e) if so directed by a committee of management of the company acting under subsection (4) of section two hundred and fourteen or by a creditor or creditors of the company to whom the company owes not less than twenty per centum in value of the total unsecured debts of the company, by notice posted to each of the creditors, call a meeting of creditors of the company;

(f) if a meeting of creditors held under subsection (1) of section 203c does not resolve to extend the period of the official management, within seven days of such failure to extend the period by notice posted to each of the members of the company call a meeting of the members to be held on a day not later than twenty-one days after the meeting of creditors under subsection (1) of section 203c for the purpose of—

(i) reporting to the members accordingly; and

(ii) enabling the members if they think fit to elect directors of the company to take office upon the termination of the period of official management.

(2) A meeting called under paragraph (f) of subsection (1) of this section shall be deemed to have been properly called and empowered under the memorandum and articles of the company to appoint or elect directors, and directors so appointed or elected shall take office on the termination of the period of official management of the company.

(3) If at any time the official manager is of the opinion that the continuance of the official management of the company will not enable the company to pay its debts he shall call a meeting
of

of the members of the company for the purpose No. 21, 1966 of considering and, if thought fit, passing a special resolution that the company be wound up voluntarily.

(4) Upon determining to call a meeting of members under subsection (3) of this section the official manager shall—

- (a) call a meeting of the creditors of the company for the day, or the day next following the day on which the meeting of members is proposed to be held;
- (b) cause the notice 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 members;
- (c) call the meeting of creditors for a time and place convenient to the majority in value of the creditors and give the creditors at least seven clear days' notice by post of the meeting; and
- (d) cause notice of the meeting of the creditors to be advertised at least seven days before the day of the meeting in the Gazette and in a daily newspaper circulating generally throughout the State.

(5) At the meeting of creditors of the company called under subsection (4) of this section the official manager shall lay before the meeting a full statement of the company's affairs showing in respect of assets the method and manner in which the valuation of the assets was arrived at, together with a list of the creditors of the company and the estimated amount of their claims.

(6) Where a meeting of members called under subsection (3) of this section has passed a special resolution to the effect that the company be wound up voluntarily the company shall, and the creditors may, at their respective meetings called

under

168 Companies (Amendment) Act.

No. 21, 1966

under subsections (3) and (4) of this section, nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons the person nominated by the creditors shall be liquidator, but if no person is nominated by the creditors the person nominated by the company shall be liquidator.

(7) Notwithstanding the provisions of subsection (6) of this section, where different persons are nominated any member or creditor may, within seven days after the date on which the nomination was made by the creditors, apply to the Court for an order directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors.

(8) On the appointment of a liquidator the company shall cease to be under official management.

(9) The person who immediately prior to the appointment of the liquidator was the official manager shall within seven days after the holding of the meetings referred to in subsections (3) and (4) of this section lodge with the Registrar a notice in the prescribed form of the holding of the meetings and the dates thereof with a copy of the statement referred to in subsection (5) of this section attached to such notice.

(10) Every person who fails to comply with any of the provisions of subsections (1), (3), (4), (5) and (9) of this section shall be guilty of an offence against this Act.

Penalty : Four hundred dollars. Default penalty : One hundred dollars.

207. (1) Any transfer, mortgage, delivery of No. 21, 1966 goods, payment, execution or other act relating to property made or done by or against a company which, had it been made or done by or against an individual, would in his bankruptcy be void or voidable shall, in the event of the company being placed under official management, be void or voidable in like manner.

(2) For the purposes of this section the date which corresponds with the date of presentation of the bankruptcy petition in the case of an individual shall be the date of the commencement of the official management of the company.

208. (1) The official manager may sell or otherwise dispose of any assets of the company if the sale or disposition is in the ordinary course of the business of the company.

(2) The official manager may sell or otherwise dispose of any assets of the company otherwise than in the ordinary course of the business of the company if the value of the assets in question together with the sale price of any other assets previously sold or disposed of otherwise than in the ordinary course of the business of the company during the period of official management does not exceed in the aggregate four hundred dollars.

(3) The official manager may with the consent of the committee of management sell or otherwise dispose of any assets of the company otherwise than in the ordinary course of the business of the company if the value of the assets in question together with the sale price of any other assets previously sold or disposed of otherwise than in the ordinary course of the business of the company during the period of official management does not exceed in the aggregate two thousand dollars.

No. 21, 1966

(4) The official manager may with the leave of the Court sell or otherwise dispose of any assets of the company.

(5) The moneys of the company that become available to the official manager during the official management shall be applied by him in the following order—

- (a) firstly, in payment of the costs of the official management including his remuneration, the remuneration of the deputy official manager (if any) and that of an auditor (if any) appointed in accordance with the provisions of Division 2 of Part VI;
- (b) secondly, in payment of the liabilities of the company incurred in the course of the official management; and
- (c) thirdly, in payment of any other liabilities of the company.

(6) Subject to subsection (5) of this section, the claims of the creditors of the company referred to in paragraph (c) of subsection (5) of this section shall be paid in accordance with Part X, as if those claims were claims against a company being wound up and the provisions of that Part with necessary adaptations shall apply to and in relation to those claims accordingly.

Official
manager
may apply
to Court
for
directions.

Application
of certain
provisions
in winding
up to
official
management.

208A. The official manager may apply to the Court for directions in relation to any particular matter arising out of the exercise of his powers or functions as official manager.

209. Where a company is under official management, the provisions of paragraph (g) of subsection (1) of section two hundred and eighteen and the provisions of sections two hundred and forty-eight, two hundred and forty-nine, three hundred

hundred and four, three hundred and five ^{No. 21, 1966} and three hundred and six shall apply as if the company under official management were a company being wound up and the official manager were the liquidator and any reference in those sections to contributors shall be read as a reference to members.

210. (1) If at any time, on the application of the official manager or of any creditor or member of a company, it appears to the Court that the purpose for which the company was placed under official management has been fulfilled, or for any reason it is undesirable that the company should continue to be under official management, the Court may by order terminate the official management on the date specified in the order and upon that date the official manager shall cease to be the official manager of the company.

(2) On making an order under subsection (1) of this section, the Court may also give such directions as it deems fit for the resumption of the management and control of the company by its officers, including directions for the calling of a general meeting of members of the company to elect directors to take office upon the termination of the official management.

(3) The costs of any proceeding before the Court under this section and the costs incurred in calling a meeting of members of the company pursuant to an order of the Court under this section shall, if the Court so directs, be part of the costs of the official management of the company.

211. (1) Notwithstanding that a resolution has been passed under subsection (1) of section two hundred and two determining that a company shall ^{Resolution to place company under official management effective, subject to appeal.} be

be placed under official management, and notwithstanding anything contained in subsection (1) of section two hundred and three—

- (a) any creditor to whom the company owes, or any representative of a group of creditors to whom the company owes collectively, more than ten per centum of the total unsecured debts of the company; or
- (b) any member holding, or any representative of a group of members holding collectively, not less than ten per centum of the paid up capital of the company; or
- (c) in the case of a company not having a share capital, any member holding, or any representative of a group of members holding collectively, not less than ten per centum of the total voting rights of all members having a right to vote at all general meetings,

may apply to the Court for the variation or cancellation of the resolution at any time within a period of fourteen days after the passing thereof and the Court may, if it is of the opinion that there is no reasonable prospect of the company being rehabilitated or that the resolution is not in the interests of the creditors and the members of the company, vary or cancel the resolution.

(2) Where the Court makes an order cancelling the resolution under subsection (1) of this section the Court may give such directions as it considers necessary for the resumption of the management and control of the company by the persons who were officers of the company immediately prior to its being placed under official management.

(3) Upon cancellation of the resolution by the Court under subsection (1) of this section, the company shall cease to be under official management and the person appointed official manager of the

the company shall cease to be the official manager ^{No. 21, 1^o} ~~1^o~~ ⁶⁶ and upon any variation of the resolution by the Court under this section, the resolution shall have effect as so varied; but notwithstanding that the resolution may be so varied or cancelled by the Court, the acts of an official manager prior to any such variation or cancellation shall be valid and binding on the company and on the members and creditors thereof.

211A. (1) Where the Court makes an order ^{Lodgment} ~~of office~~ under section two hundred and ten or section two ^{copy of} hundred and eleven the person obtaining the order ^{copy of} ~~Court order~~ shall within seven days after the order is made lodge with the Registrar notice in the prescribed form of the making of the order and the date thereof.

(2) The person who obtained the order shall lodge with the Registrar an office copy of the order within seven days of the passing and entering of the order.

(3) Where the Court makes an order under section two hundred and ten or section two hundred and eleven terminating the official management of a company the person obtaining the order shall within seven days after the passing and entering of the order publish a copy of the order at least once in a daily newspaper circulating generally throughout the State.

(4) A person who fails to comply with any of the provisions of this section shall be guilty of an offence against this Act.

Penalty : One hundred dollars. Default penalty.

212. (1) Where the appointment of a person as ^{Release of} ~~official~~ ^{official} manager of a company is determined under this Part he shall notwithstanding that his appointment has been so determined, within fourteen days thereafter, prepare a report showing how the ^{manager.} ~~official~~

official management was conducted by him and for this purpose shall have a right of access to the records and books of the company.

(2) A person shall within twenty-eight days of the determination of his appointment as official manager call a meeting of the creditors of the company.

(3) Notice of the meeting shall be given to the creditors of the company by—

- (a) posting to each of the creditors a notice and a copy of the report referred to in subsection (1) of this section; and
- (b) publishing a copy of the notice at least once in a daily newspaper circulating generally throughout the State,

not less than seven days nor more than fourteen days before the day of the meeting.

(4) At the meeting of creditors called under subsection (2) of this section the person who was official manager shall present his report to the meeting and shall give such explanations thereof as may be reasonably requested by any creditor.

(5) Within seven days after the holding of the meeting the person who was official manager shall lodge with the Registrar notice of the holding of the meeting and of its date with a copy of the report prepared by him under subsection (1) of this section.

Penalty : One hundred dollars. Default penalty.

(6) The expenses incurred by the person who was official manager in connection with the preparation of the report referred to in subsection (1) of this section and in relation to the calling and holding of the meeting referred to in subsection (2) of this section shall be part of the costs of the official management.

(7)

(7) Subject to subsection (8) of this No. 21, 1966 section, where a person ceases to be the official manager of a company, the adoption by the meeting of creditors of the company of the report prepared by him under subsection (1) of this section and of his explanations shall discharge him from all liability in respect of any act or omission by him in the management of the company or otherwise in relation to his conduct as official manager.

(8) The adoption of the report referred to in subsection (1) of this section and the explanations thereof shall not so discharge the person who was official manager if such adoption was obtained by fraud or by suppression or concealment of any material fact nor discharge him from any liability that by virtue of any enactment or 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.

(9) If the report referred to in subsection (1) of this section and the explanations thereof are not, within two months after being presented to the meeting of creditors of the company, adopted by a meeting of creditors the person who was official manager may apply to the Court for an order of release.

(10) The Court may grant or refuse the application and may direct that court costs incurred by the person who was official manager in connection with his application for release following the determination of his appointment shall be part of the costs of the official management and the order, if granted, shall have effect as if the report and explanations had been adopted by a meeting of creditors of the company.

213. (1) Where a company is under official management, every invoice, order for goods or of company business letter issued by or on behalf of the company under or the official manager thereof, being a document management on or in which the name of the company appears, shall state that fact.

No. 21, 1966

shall have the words "under official management" immediately following the name of the company where it first appears therein.

(2) If default is made in complying with subsection (1) of this section, the company and every officer of the company who knowingly and wilfully authorises or permits the default shall be guilty of an offence against this Act.

Penalty : One hundred dollars.

Functions
of com-
mittee of
manage-
ment and
appoint-
ment of
deputy
official
manager.

214. (1) A committee of management appointed pursuant to this Part shall assist and advise the official manager on any matters relating to the management of the company on which he requests their advice and assistance.

(2) Either a committee of management or a meeting of creditors convened by the official manager—

(a) may appoint a person who—

(i) has consented in writing to act as deputy official manager of the company;

(ii) is not the auditor of the company; and

(iii) has certified in writing that he is neither an undischarged bankrupt nor a person who has made any arrangement or composition with his creditors generally and has not been released from his indebtedness,

to be deputy official manager who, in the absence of the official manager, shall, subject to any written directions given to him by the official manager, act as the official manager and, while so acting, shall have the powers, duties and functions of the official manager;

(b) may remove the deputy official manager and may, if it feels it is necessary, appoint another person to be deputy official manager in his place;

(c)

(c) may determine the amount of the salary or ~~No. 21, 1966~~ the remuneration of the deputy official manager.

(3) Within fourteen days of a person being appointed to be a deputy official manager or of a person ceasing to be a deputy official manager that person shall lodge notice in the prescribed form of the appointment or cessation, as the case requires, with the Registrar.

(4) A committee of management may at any time and from time to time direct the official manager of the company to call a meeting of the creditors of the company or the members thereof or of both and the official manager shall give effect to the direction.

(5) Subject to this section and to the regulations, the provisions of subsections (2) to (9), both inclusive, of section two hundred and forty-two shall apply to and with respect to a committee of management and the proceedings of and vacancies in a committee of management and to and with respect to the removal of members thereof, any reference in those provisions to the committee of inspection being read as a reference to the committee of management, any reference therein to the liquidator being read as a reference to the official manager and any reference therein to a contributory being read as a reference to a member of the company.

215. The accidental omission to give notice of a meeting held for the purposes of this Part to, or the non-receipt of a notice of the meeting by, any person shall not invalidate the meeting or the proceedings at the meeting unless the Court, on the application of a creditor or member of the company or the official manager of the company concerned, otherwise declares.

(d)

No. 21, 1966

Sec. 292.
(Priorities.)

(d) (i) by inserting next after paragraph (a) of subsection (1) of section two hundred and ninety-two the following new paragraphs :—

(aa) secondly, where the winding up of a company commences within two months after the determination of a period of official management of that company the costs of the official management properly and reasonably incurred by the official manager during that period of official management including the remuneration of the official manager, the deputy official manager (if any) and that of an auditor (if any) appointed in accordance with the provisions of Division 2 of Part VI;

(ab) thirdly, where the winding up of a company commences within two months after the determination of a period of official management of that company the debts of the company properly and reasonably incurred by the official manager in the conduct by him of the business of the company during the period of official management;

(ii) by omitting from paragraph (b) of the same subsection the word "secondly" and by inserting in lieu thereof the word "fourthly";

(iii) by omitting from paragraph (c) of the same subsection the word "thirdly" and by inserting in lieu thereof the word "fifthly";

(iv) by omitting from paragraph (d) of the same subsection the word "fourthly" and by inserting in lieu thereof the word "sixthly";

(v) by omitting from paragraph (e) of the same subsection the word "fifthly" and by inserting in lieu thereof the word "seventhly";

(e)

(e) by omitting subsection (2) of section two hundred and ninety-three and by inserting in lieu thereof the following subsection :—

No. 21, 1966
Sec. 293.
(Undue
preference.)

(2) For the purposes of this section, the date that corresponds with the date of presentation of the petition in any proceedings in bankruptcy in the case of an individual shall be—

(a) in the case of a winding up by the Court—

(i) where before the presentation of the petition for the winding up a resolution has been passed by the company for winding up the company voluntarily, the date upon which the resolution to wind up the company voluntarily is passed; or

(ii) where on the presentation of the petition for the winding up the company is under official management or has been under official management at any time within six months prior to the presentation of the petition, the date of the commencement of the official management; or

(iii) the date of the presentation of the petition for the winding up,

whichever is the earliest; and

(b) in the case of a voluntary winding up—

(i) the date upon which the resolution to wind up the company voluntarily is passed; or

(ii) where on the date of the passing of that resolution the company is under official management or has been under official management at any time within six months

No. 21, 1966

months prior to the passing of that resolution, the date of the commencement of the official management,

whichever is the earlier.

Sec. 350.
(Obligation
to state
name of
foreign
company
whether
limited,
State or
country,
where in-
corporated.)

(f) by inserting at the end of section three hundred and fifty the following new subsections :—

(2) If a foreign company incorporated under the law of any other State or Territory of the Commonwealth is placed under official management in its place of incorporation by any law or enactment corresponding to Part IX or is being wound up every invoice, order for goods or business letter issued by or on behalf of the company, or an official manager or 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 "under official management", or "in liquidation" (whichever is appropriate) immediately following the name of the company where it first appears therein.

(3) If default is made in complying with subsection (2) of this section, the company and every officer of the company who knowingly and wilfully authorises or permits the default shall be guilty of an offence against this Act.

Penalty : Forty dollars.

Sec. 352.
(Cesser of
business in
the State.)

(g) by inserting next after subsection (2) of section three hundred and fifty-two the following new subsection :—

(2A) If a foreign company incorporated under the law of any other State or Territory of the Commonwealth is placed under official management in its place of incorporation by any law or enactment corresponding to Part IX or if such period of official management is terminated the company shall, within one month after such commencement or termination or within such further time as the

Registrar

Registrar in special circumstances allows, lodge or No. 21, 1966 cause to be lodged with the Registrar notice in the prescribed form of that fact.

(h) (i) by omitting from subsection (3) of section Sec. 366. three hundred and sixty-six the word (Irregularities in "thereof" where firstly occurring; proceedings.)

(ii) by inserting in the same subsection after the word "directors" wherever occurring the words "of the company or of the creditors of the company or at a joint meeting of the creditors and members of the company".

4. (1) The Principal Act, as amended by section three Further amendment of this Act, is further amended—
of Act No. 71, 1961.

(a) by omitting from paragraph (c) of subsection two Sec. 42. of section forty-two the word "and" where secondly (Registration of occurring; prospectus.)

(b) by inserting at the end of paragraph (d) of the same subsection the following word and new paragraph :—
; and

(e) in the case of a prospectus pursuant to which the public is to be invited to deposit money with or lend money to a corporation which is a subsidiary of another corporation—
(i) the prospectus contains a statement as to whether or not that other corporation is under any liability to repay those moneys or to pay any interest thereon; and
(ii) where that other corporation is so stated to be under any such liability, the prospectus also gives full particulars of the nature and extent of

No. 21, 1966

of that liability, of the circumstance under which that liability arose and the manner in which that liability is to be discharged.

(2) The amendments made by subsection one of this section shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette, being a day not earlier than the day appointed under subsection three of section one of this Act.
