

**COMPANIES (AMENDMENT) ACT.**

**New South Wales**



ANNO VICESIMO

**ELIZABETHÆ II REGINÆ**

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**Act No. 61, 1971.**

An Act to make provisions with respect to the disclosure of substantial shareholdings in companies, take-over offers for shares in companies and related matters, the accounts of companies and the auditing of those accounts, and the investigation of the affairs of companies; for these and other purposes to amend the Companies Act, 1961, the Public Accountants Registration Act, 1945, the Business Names Act, 1962, the Companies (Transfer of Domicile) Act, 1968, and the Securities Industry Act, 1970; to validate certain matters; and for purposes connected therewith. [Assented to, 15th December, 1971.]

**BE**

*Companies (Amendment).*

**B**E it enacted by the Queen's Most Excellent Majesty, by **No. 61, 1971** 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.**

1. (1) This Act may be cited as the "Companies Short title and commencement. (Amendment) Act, 1971".

(2) This Part of this Act shall commence on the day upon which this Act receives the Royal assent.

(3) Subject to subsection two of this section, this Act shall commence in accordance with subsection four of this section.

(4) The Governor may appoint, and notify by proclamation published in the Gazette, the day upon which a Part or provision of this Act shall commence and may, at different times, appoint different days for different Parts or provisions, and the Part or provision to which such a proclamation relates shall commence as specified therein.

(5) The Companies Act, 1961, is in this Act referred to as the Principal Act.

2. This Act is divided, as follows—

**Division of Act.**

**PART I.—PRELIMINARY—ss. 1 and 2.**

**PART II.—SUBSTANTIAL SHAREHOLDINGS, DIRECTORS' INTERESTS AND TAKE-OVERS—ss. 3—5.**

**PART III.—ACCOUNTS AND AUDIT—s. 6.**

**PART IV.—SPECIAL INVESTIGATIONS—ss. 7 and 8.**

**PART V.—DEFAULTING OFFICERS—s. 9.**

**PART VI.—MISCELLANEOUS—ss. 10—29.**

**PART**

No. 61, 1971**PART II.****SUBSTANTIAL SHAREHOLDINGS, DIRECTORS' INTERESTS AND TAKE-OVERS.****Amendment  
of Act No.  
71, 1961.****3. The Principal Act is amended—****Sec. 3.  
(Division  
into Parts.)**

- (a) (i) by omitting from the matter relating to Part I in section three the figure "6" and by inserting in lieu thereof the figure "6A";
- (ii) by inserting next after the matter relating to Division 3 of Part IV in the same section the following new matter :—

**DIVISION 3A.—*Substantial Shareholdings*—  
ss. 69A—69N.**

- (iii) by inserting immediately before the matter relating to Part VII in the same section the following new matter :—

**PART VI B.—TAKE-OVERS—ss. 180A—  
180Y.****Sec. 5.  
(Interpreta-  
tion.)  
“Voting  
share.”**

- (b) (i) by inserting at the end of subsection one of section five the following new definition :—

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

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

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

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

(ii)

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- (ii) upon a proposal to No. 61, 1971 reduce the share capital of the body corporate;
- (iii) upon a proposal that affects rights attached to the share;
- (iv) upon a proposal to wind up the body corporate;
- (v) upon a proposal for the disposal of the whole of the property, business and undertaking of the body corporate;
- (vi) during the winding up of the body corporate.

  

- (ii) by omitting paragraph (d) of subsection six of the same section and by inserting in lieu thereof the following paragraph :—
- (d) made to a dissenting offeree within the meaning of section 180x or, within the meaning of section one hundred and eighty-five, to existing members of a transferor company with respect to shares in a transferee company or, within the meaning of section two hundred and seventy, to existing members of the company relating to shares in the corporation.

(c)

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New sec.  
6A.Certain  
interests  
in shares  
to be  
relevant  
interests  
for  
certain  
purposes.

(c) by inserting next after section six the following new section :—

6A. (1) Subject to this section, a person has a relevant interest in a share in a body corporate—

(a) for the purposes of Division 3A of Part IV, if that share is a voting share and that person has power—

(i) to exercise, or to control the exercise of, the right to vote attached to that share; or

(ii) to dispose of, or to exercise control over the disposal of, that share;

(b) for the purposes of sections one hundred and twenty-six and one hundred and twenty-seven, if that person has power to dispose of, or to exercise control over the disposal of, that share;

(c) for the purposes of Part VIb, if that person has power—

(i) where the share is a voting share, to exercise, or to control the exercise of, the right to vote attached to that share; or

(ii) to dispose of, or to exercise control over the disposal of, that share, whether or not it is a voting share.

(2) It is immaterial for the purposes of this section whether the power of a person—

(a) to exercise, or to control the exercise of, the right to vote attached to a voting share in a body corporate; or

(b) to dispose of, or exercise control over the disposal of, a share,

is express or implied or formal or informal, is exercisable alone or jointly with another person or other persons, cannot be related to a particular

share,

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share, or is, or is capable of being made, subject No. 61, 1971 to restraint or restriction and any such power exercisable jointly with another person or other persons shall, for those purposes, be deemed to be exercisable by either or any of those persons.

(3) A reference in this section to power or control includes a reference to power or control that is direct or indirect or is, or is capable of being, exercised as a result of, or by means of, or in breach of, trusts, agreements, arrangements, understandings and practices, or any of them, whether or not they are enforceable, and a reference in this section to a controlling interest includes a reference to such an interest as gives control.

(4) Where a person—

- (a) has entered into an agreement with respect to a share;
- (b) has a right relating to a share, whether the right is enforceable presently or in the future and whether on the fulfilment of a condition or not; or
- (c) has an option with respect to a share,

and, on fulfilment of the agreement, enforcement of the right or exercise of the option that person would have a relevant interest in the share he shall, for the purposes of this section, be deemed to have that relevant interest in the share.

(5) For the purposes of this section, where a body corporate has power—

- (a) to exercise, or to control the exercise of, the right to vote attached to a voting share; or

(b)

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(b) to dispose of, or to exercise control over the disposal of, a share,  
and—

- (c) the body corporate is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions of a person in relation to the exercise of the power;
- (d) a person has a controlling interest in the body corporate; or
- (e) a person has, the associates of a person have, or a person and his associates have power to exercise, or to control the exercise of, not less than fifteen per centum of the votes that may be exercised pursuant to rights to vote attached to the voting shares of the body corporate,

that person shall be deemed to have the same power in relation to that share as the body corporate has.

(6) For the purposes of subsection (5) of this section, a person is an associate of another person if the first-mentioned person is—

- (a) a corporation that, by virtue of subsection (5) of section six, is deemed to be related to that other person;
- (b) a person in accordance with whose directions that other person is accustomed or is under an obligation, whether formal or informal, to act in relation to a power referred to in subsection (5) of this section;
- (c) a person who is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions of that other person in relation to that power;
- (d)

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- (d) a body corporate that is, or the directors of No. 61, 1971 which are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions of that other person in relation to that power; or
- (e) a body corporate in accordance with the directions of which, or of the directors of which, that other person is accustomed or under an obligation, whether formal or informal, to act in relation to that power.

(7) A relevant interest in a share shall be disregarded—

- (a) for the purposes of Division 3A of Part IV, sections one hundred and twenty-six and one hundred and twenty-seven and Part VIb—
  - (i) if the ordinary business of the person who has the relevant interest includes the lending of money and he has authority to exercise his powers as the holder of the relevant interest only by reason of a security given for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money;
  - (ii) if the relevant interest is that of a person who has it by reason of his holding a prescribed office;
  - (iii) if the ordinary business of the person who has the relevant interest includes dealing in securities within the meaning of the Securities Industry Act, 1970, and he has authority to exercise his powers as the holder of the relevant interest only

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only by reason of instructions given to him by or on behalf of another person to dispose of that share on behalf of that person in the ordinary course of business;

(iv) if the share is subject to a trust, the relevant interest is that of a trustee and a beneficiary is deemed, by subsection (4) of this section, to have that relevant interest by virtue of a presently enforceable and unconditional right referred to in paragraph (b) of that subsection; and

(b) for the purposes of Division 3A of Part IV and of Part VIb, if the relevant interest is that of a person who has it by reason of his having been appointed as a proxy or representative to vote at a meeting of members, or a class of members, of a corporation.

(8) For the purposes of any prescribed provision of Division 3A of Part IV, sections one hundred and twenty-six and one hundred and twenty-seven, or Part VIb a relevant interest in a share shall be disregarded if the relevant interest is that of such person, or of the persons included in such class of persons, as is prescribed.

New Div.  
3A of Part  
IV.

(d) by inserting next after Division 3 of Part IV the following new Division :—

**DIVISION 3A.—*Substantial Shareholdings.***

Application  
and inter-  
pretation of  
Division.

69A. (1) This section has effect for the purposes of this Division.

**(2)**

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(2) A reference to a company is a No. 61, 1971 reference—

- (a) to a company all or any of the shares in which are listed for quotation on the official list of a stock exchange in Australia;
- (b) to a body corporate, being a body incorporated in the State, all or any of the shares in which are listed for quotation on the official list of a stock exchange in Australia, and which is for the time being declared by the Minister, by order published in the Gazette, to be a company for the purposes of this Division; or
- (c) to a body, not being a body corporate, formed in the State, all or any of the shares in which are listed for quotation on the official list of a stock exchange in Australia, and which is for the time being declared by the Minister, by order published in the Gazette, to be a company for the purposes of this Division.

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

(4) A reference in the definition of "voting share" in subsection (1) of section five to a body corporate includes a reference to a body referred to in paragraph (c) of subsection (2) of this section.

69B. (1) The obligation to comply with this ~~Persons~~ Division extends to all natural persons, whether ~~obliged to~~ resident in the State or in Australia or not and ~~comply with~~ ~~Division.~~ whether Australian citizens or not, and to all bodies corporate

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corporate and unincorporate, whether incorporated or carrying on business in the State or in Australia or not.

(2) This Division extends to acts done or omitted to be done outside the State, whether in Australia or not.

**Substantial shareholdings and substantial shareholders.**

69c. (1) For the purposes of this Division, a person has a substantial shareholding in a company if he has a relevant interest or relevant interests in one or more voting shares in the company and the nominal amount of that share, or the aggregate of the nominal amounts of those shares, is not less than one-tenth of the aggregate of the nominal amounts of all the voting shares in the company.

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

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

**Substantial shareholder to notify company of relevant interests.**

69D. (1) A person who is a substantial shareholder in a company shall give notice in writing to the company stating his name and address and full particulars of the voting shares in the company in which he has a relevant interest or relevant interests (including, unless the interest or interests cannot be related to a particular share or shares, the name of the person who is registered as the holder) and full particulars of each such interest and of the circumstances by reason of which he has that interest.

(2)

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(2) A person required to give a notice No. 61, 1971 under subsection (1) of this section shall give the notice—

- (a) within one month after the date on which this Division came into operation; or
- (b) within fourteen days after that person becomes aware of the relevant interest or interests by virtue of which he is a substantial shareholder,

whichever is the later.

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

69E. (1) Where there is a change (not being a prescribed change) in the relevant interest or interests of a substantial shareholder in a company in voting shares in the company, he shall give notice in writing to the company stating his name and full particulars of the change, including the date of the change and the circumstances by reason of which that change has occurred.

(2) A person required to give a notice under subsection (1) of this section shall give the notice within fourteen days after he becomes aware of the change.

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

69F. (1) A person who ceases to be a substantial shareholder in a company shall give notice in writing to the company stating his name and the date

Substantial shareholder to notify company of change in his relevant interests.

Person who ceases to be substantial shareholder to notify company.

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date on which he ceased to be a substantial shareholder and full particulars of the circumstances by reason of which he ceased to be a substantial shareholder.

(2) A person required to give a notice under subsection (1) of this section shall give the notice within fourteen days after he becomes aware that he has ceased to have a relevant interest or relevant interests in a share or shares in a company to the extent necessary to make him a substantial shareholder in the company.

References  
to operation  
of section  
6A.

69G. The circumstances required to be stated in a notice under section 69D, 69E or 69F include circumstances by reason of which, having regard to the provisions of section 6A—

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

respectively.

Notice to  
non-  
residents.

69H. (1) A person who holds voting shares in a company, being voting shares in which he knows or has reasonable grounds for believing a non-resident has a relevant interest, shall—

- (a) give to the non-resident a notice in the prescribed form as to the requirements of this Division; or
- (b) where the first-mentioned person knows, or has reasonable grounds for believing, that an interest of the non-resident in the

shares

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shares is a relevant interest that the non-<sup>No. 61, 1971</sup> resident holds for another person, give to the non-resident a notice in the prescribed form as to the requirements of this Division and direct the non-resident to give the notice, or a copy of the notice, to that other person.

(2) A person required to give a notice under subsection (1) of this section shall give the notice within fourteen days after—

- (a) this Division came into operation; or
- (b) he becomes aware, or first has reasonable grounds for believing, that the non-resident has the relevant interest,

whichever is the later.

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

(4) Nothing in this section affects the operation of section 69B.

**69J.** The Commission may, on the application of a person who is required to give a notice under this Division, in its discretion, extend, or further extend, the time for giving the notice. Commission may extend time for giving notice under this Division.

**69K.** (1) A company shall keep a register in which it shall forthwith enter— Company to keep register of substantial shareholders.

- (a) in alphabetical order the names of persons from whom it has received a notice under section 69D; and
- (b) against each name so entered, the information given in the notice and, where it receives a notice under section 69E or 69F, the information given in that notice.

(2)

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

(3) A person may request the company to furnish him with a copy of the register or any part of the register on payment in advance of a sum of twenty cents or such lesser sum as the company requires for every one hundred words or fractional part thereof required to be copied and the company shall send the copy to that person, within fourteen days or such longer period as the Commission thinks fit, after the day on which the request is received by the company.

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

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

Penalty: One thousand dollars. Default penalty: Two hundred dollars.

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

(a) to be taken for any purpose to have notice of; or

(b)

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(b) put upon inquiry as to,  
a right of a person to or in relation to a share in the company.

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69L. A person who fails to comply with section 69D, 69E or 69F is guilty of an offence. Offences against certain sections.

Penalty: One thousand dollars. Default penalty:  
Two hundred dollars.

69M. In any proceedings under section 69H, Knowledge of servant or agent imputed to master or principal. A person shall, in the absence of proof to the contrary, be presumed to have been aware at a particular time of a fact or occurrence of which a servant or agent having duties or acting in relation to a relevant interest, or relevant interests, of his master or principal in a share or shares in the company concerned was aware at the time.

69N. (1) Where a person (in this section referred to as "the substantial shareholder") is, or at any time after the date on which this Division came into operation has been, a substantial shareholder in a company and has failed to comply with section 69D, 69E or 69F, the Court may, on the application of the Commission, whether or not that failure still continues, make one or more of the following orders, but not so as to affect the exercise, by a person who in good faith and without notice of that failure has for value bought shares in which the substantial shareholder has had a relevant interest, of any right acquired by that person as a result of having so bought those shares :—

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

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

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

(3)

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(3) An order under this section directing No. 61, 1971 the sale of a share may provide that the sale shall be made within such time and subject to such conditions, if any, as the Court thinks fit, including, if the Court thinks fit, a condition that the sale shall not be made to a person who is, or, as a result of the sale, would become, a substantial shareholder in the company.

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

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

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

- (a) that the failure of the substantial shareholder to comply as mentioned in subsection (1) of this section was due to his inadvertence or mistake and that the failure ought to be excused; or
- (b) on any other grounds, the failure ought to be excused.

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

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

(9)

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(9) Section three hundred and eleven applies in relation to a share that vests in the Commission under this section as section three hundred and eleven applies in relation to an estate or interest in property referred to in section three hundred and eleven.

(10) A person shall not contravene or fail to comply with an order under this section that is applicable to him.

Penalty: One thousand dollars. Default penalty: Two hundred dollars.

(11) Where an offence under subsection (10) of this section is committed by a corporation, an officer of the corporation who is in default is guilty of the same offence.

Penalty : One thousand dollars. Default penalty : Two hundred dollars.

(12) Subsections (10) and (11) of this section do not affect the powers of the Court in relation to the punishment of contempts of the Court.

**Subst. sec.  
126.**

(e) by omitting section one hundred and twenty-six and by inserting in lieu thereof the following section :—

**Register  
of directors'  
share-  
holdings, &c.**

126. (1) A company shall keep a register showing with respect to each director of the company (other than a director that is its holding company) particulars of—

- (a) shares in the company or in a related corporation being shares in which the director has a relevant interest and the extent of that interest ;
- (b) debentures of, or participatory interests made available by, the company or a related corporation in which the director has a relevant interest and the extent of that interest ;

(c)

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- (c) rights or options of the director or of the No. 61, 1971 director and another person or other persons in respect of the acquisition or disposal of shares in, debentures of, or participatory interests made available by, the company or a related corporation; and
- (d) contracts to which the director is a party or under which he is entitled to a benefit being contracts under which a person has a right to call for or to make delivery of shares in, debentures of, or participatory interests made available by, the company or a related corporation.

(2) A company need not show in its register with respect to a director particulars of shares in a related corporation that is the wholly-owned subsidiary of the company or of another corporation.

(3) A company that is a wholly-owned subsidiary of another company shall be deemed to have complied with this section in relation to a director who is a director of that other company if the particulars required by this section to be shown in the register of the first-mentioned company with respect to the director are shown in the register of the second-mentioned company.

(4) For the purposes of subsections (2) and (3) of this section, a company is a wholly-owned subsidiary of another company if none of the members of the first-mentioned company is a person other than—

- (a) the second-mentioned company;
- (b) a nominee of the second-mentioned company;

(c)

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- (c) a subsidiary of the second-mentioned company being a subsidiary none of the members of which is a person other than the second-mentioned company or a nominee of the second-mentioned company; or

- (d) a nominee of such a subsidiary.

(5) A company shall, within seven days after receiving notice from a director under paragraph (a) of subsection (1) of section one hundred and twenty-seven, enter in its register in relation to the director the particulars referred to in subsection (1) of this section including the number and description of shares, debentures, participatory interests, rights, options and contracts to which the notice relates and in respect of shares, debentures, participatory interests, rights or options acquired or contracts entered into after he became a director—

- (a) the price or other consideration for the transaction (if any) by reason of which an entry is required to be made under this section; and

- (b) the date of—

- (i) the agreement for the transaction or, if it is later, the completion of the transaction; or

- (ii) where there was no transaction, the occurrence of the event by reason of which an entry is required to be made under this section.

(6) A company shall, within three days after receiving a notice from a director under paragraph (b) of subsection (1) of section one hundred and twenty-seven, enter in its register the particulars of the change referred to in the notice.

(7)

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(7) A company is not, by reason of any- **No. 61, 1971**  
thing done under this section, to be taken for any  
purpose to have notice of, or to be upon inquiry as  
to, the right of a person to, or in relation to, a share  
in, debenture of, or participatory interest made  
available by, the company.

(8) A company shall, subject to this sec-  
tion, keep its register at the registered office of the  
company and the register shall be open for inspec-  
tion by a member of the company without charge  
and by any other person on payment for each  
inspection of a sum of fifty cents or such lesser sum  
as the company requires.

(9) A person may request a company to  
furnish him with a copy of its register or any part  
of its register on payment in advance of a sum of  
twenty cents or such lesser sum as the company  
requires for every one hundred words or fractional  
part of one hundred words required to be copied  
and the company shall send the copy to that person  
within twenty-one days, or such longer period as  
the Commission thinks fit, after the day on which  
the request is received by the company.

(10) The Commission may, at any time,  
in writing require a company to furnish it with a  
copy of its register or any part of its register and  
the company shall furnish the copy within seven  
days after the day on which the requirement is  
received by the company.

(11) A company shall produce its register  
at the commencement of each annual general  
meeting of the company and keep it open and  
accessible during the meeting to all persons  
attending the meeting.

(12)

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(12) It is a defence to a prosecution for failing to comply with subsection (1) or (5) of this section in respect of particulars relating to a director if the defendant proves that the failure was due to the failure of the director to comply with section one hundred and twenty-seven with respect to those particulars.

(13) In this section a reference to a participatory interest is a reference to an interest within the meaning of section seventy-six.

(14) In determining, for the purposes of this section, whether a person has a relevant interest in a debenture or participatory interest, the provisions of section 6A (paragraphs (a) and (c) of subsection (1) excepted) have effect and, in applying those provisions, a reference to a share shall be read as a reference to a debenture or participatory interest.

(15) 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 against this Act.

Penalty : One thousand dollars. Default penalty.

Subst. sec.  
127.

(f) by omitting section one hundred and twenty-seven and by inserting in lieu thereof the following section :—

General  
duty to  
make dis-  
closure.

127. (1) A director of a company shall give notice in writing to the company—

(a) unless the director is the holding company of the company, of such particulars relating to shares, debentures, participatory interests, rights, options and contracts as are necessary

for

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for the purposes of compliance by the No. 61, 1971 first-mentioned company with the provisions of section one hundred and twenty-six;

- (b) of particulars of any change in respect of the particulars referred to in paragraph (a) of this subsection of which notice has been given to the company including the consideration (if any) received as a result of the event giving rise to the change;
- (c) of such events and matters affecting or relating to himself as are necessary for the purposes of compliance by the company with any of the provisions of section one hundred and thirty-four, section one hundred and eighty-four (as in force immediately before the commencement of paragraph (i) of section three of the Companies (Amendment) Act, 1971), Part VI<sub>B</sub> or the Tenth Schedule that are applicable in relation to him; and
- (d) if he is a director of a public company or of a subsidiary of a public company, of the date when he attained, or will attain, the age of seventy-two years.

**Penalty :** One thousand dollars. **Default penalty :** Two hundred dollars.

(2) A person required to give a notice under subsection (1) of this section shall give the notice—

- (a) in the case of a notice under paragraph (a) of that subsection with respect to a share, debenture, participatory interest, right, option or contract, within fourteen days after—
  - (i) the commencement of paragraph (f) of section three of the Companies (Amendment) Act, 1971;
  - (ii)

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- (ii) the date on which the director became a director; or
- (iii) as the case may require, the date on which the director became aware that he had a relevant interest in the share, debenture or participatory interest, or the date on which he became aware that he had acquired the right or option, or the date on which he entered into the contract, whichever last occurs;
- (b) in the case of a notice under paragraph (b) of that subsection, within fourteen days after that person becomes aware of the occurrence of the event giving rise to the change referred to in that paragraph; and
- (c) in the case of a notice under paragraph (d) of that subsection, within fourteen days after—
  - (i) the commencement of paragraph (f) of section three of the Companies (Amendment) Act, 1971; or
  - (ii) the date on which the director became a director,
whichever last occurs.

**Penalty :** One thousand dollars. **Default penalty :** Two hundred dollars.

**(3)** A company shall, within seven days after the receipt by it of a notice given under subsection (1) of this section, send a copy of the notice to each of the other directors of the company.

**Penalty :** One thousand dollars. **Default penalty :** Two hundred dollars.

**(4)**

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(4) In any proceedings under this section, No. 61, 1971 a person shall, in the absence of proof to the contrary, be presumed to have been aware at a particular time of a fact or occurrence of which his servant or agent was aware at that time if the servant or agent at that time had duties, or acted, in relation to—

- (a) a share, debenture or participatory interest in which, at that time, his master or principal had a relevant interest;
- (b) a right or option in favour of his master or principal; or
- (c) a contract to which his master or principal was, at that time, a party.

(5) In this section a reference to a participatory interest is a reference to an interest within the meaning of section seventy-six.

(6) In determining, for the purposes of this section, whether a person has a relevant interest in a debenture or participatory interest, the provisions of section 6A (paragraphs (a) and (c) of subsection (1) excepted) have effect and, in applying those provisions, a reference to a share shall be read as a reference to a debenture or participatory interest.

(g) by inserting in subsection two of section one Sec. 129, hundred and twenty-nine after the word “eighty-four” the words “(as in force immediately before the commencement of paragraph (i) of section three of the Companies (Amendment) Act, 1971)”. (Payments to director for loss of office, &c.)

(h)

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—  
New Part  
VIb.

(h) by inserting immediately before Part VII the following new Part :—

## PART VI<sub>B</sub>.

## TAKE-OVERS.

## Interpre- tation.

180A. (1) This section has effect for the purposes of this Part and of the Tenth Schedule.

(2) Except to the extent that the contrary intention appears—

“company” means a company as defined by subsection (1) of section five and includes a body corporate incorporated in the State that has a share capital;

“dispatch” includes communicate by any means whatsoever;

“invitation” means statement, however expressed, that is not an offer but expressly or impliedly invites a holder of shares to offer to dispose of shares or a holder of a right, being a right to acquire a share or interest in a share under an option, to dispose of the right;

"invitor" means—

(a) person who dispatches, or proposes to dispatch, an invitation, whether he dispatches or proposes to dispatch the invitation himself or by an agent; or

(b) two or more persons who together dispatch, or propose to dispatch, an invitation,

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invitation, whether they dispatch, or No. 61, 1971 propose to dispatch, the invitation themselves or by an agent;

“offeree”, in relation to an invitation, means holder of shares to which the invitation relates;

“offeree company” means—

- (a) in relation to a take-over offer that is constituted by an offer to which subsection (1) of section 180C applies—a company for the acquisition of shares in which that offer has been, or is proposed to be, dispatched;
- (b) in relation to a take-over offer that is constituted by an invitation—a company in relation to shares in which that invitation has been, or is proposed to be, dispatched; and
- (c) in relation to a take-over scheme—a company shares in which are proposed to be acquired under the scheme;

“offeror” means—

- (a) person who dispatches, or proposes to dispatch, an offer to acquire shares, whether he dispatches, or proposes to dispatch, the offer himself or by an agent; or
- (b) two or more persons who together dispatch, or propose to dispatch, an offer to acquire shares, whether they dispatch, or propose to dispatch, the offer themselves or by an agent.

and includes an invitor;

“Part

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“Part A statement” means statement in writing that complies with the requirements of Part A of the Tenth Schedule;

“Part B statement” means statement in writing that complies with the requirements of Part B of the Tenth Schedule;

“stock exchange” means prescribed stock exchange;

“take-over offer” means—

(a) offer to which subsection (1) of section 180C applies; or

(b) invitation to which subsection (3) of that section applies;

“take-over scheme” means take-over scheme as referred to in subsection (4) of this section.

(3) In relation to a company the whole or a portion of the share capital of which consists of stock, a reference to a number of shares includes a reference, in relation to an amount of stock, to a number of shares equal to the number of shares from which that amount of stock was converted.

(4) Where an offeror has dispatched, or proposes to dispatch, two or more take-over offers that relate to shares in a company and the same period is specified in those take-over offers as the period during which those shares are proposed to be acquired, those take-over offers together constitute a take-over scheme and each of those take-over offers is a take-over offer under that scheme.

(5) The shares in a company to which a person is entitled include—

(a) shares in which that person has a relevant interest; and

(b)

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(b) shares in which an associate of that person No. 61, 1971 has a relevant interest.

(6) A reference in paragraph (b) of subsection (5) of this section to an associate of a person is a reference to—

- (a) a corporation that, by virtue of subsection (5) of section six, is deemed to be related to that person;
- (b) a person in accordance with whose directions the first-mentioned person is accustomed or is under an obligation, whether formal or informal, to act in relation to shares in the company referred to in subsection (5) of this section;
- (c) a person who is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions of the first-mentioned person in relation to shares in that company;
- (d) a body corporate that is, or the directors of which are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions of that person in relation to shares in that company;
- (e) a body corporate in accordance with the directions of which, or of the directors of which, that person is accustomed or is under an obligation, whether formal or informal, to act in relation to shares in that company; or
- (f) a person who is associated with the first-mentioned person as provided by subsection (7) of this section.

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(7) For the purposes of paragraph (f) of subsection (6) of this section, a person is associated with another person—

(a) if—

(i) he has an agreement, arrangement or undertaking, whether formal or informal and whether expressed or implied, with that other person; and

(ii) he or that other person may, by reason of that agreement, arrangement or undertaking, exercise, directly or indirectly control the exercise of, or influence the exercise of, the voting power attached to a share in the company referred to in subsection (5) of this section; or

(b) if he is associated, whether formally or informally, with that other person in relation to the proposed acquisition by that other person of shares in that company otherwise than solely as a holder of shares in that company.

(8) For the purposes of subparagraph (ii) of paragraph (a) of subsection (7) of this section, it is immaterial that the power of a person to exercise, control the exercise of or influence the exercise of voting power is in any way qualified.

(9) An offer to acquire a right to acquire a share or an interest in a share under an option shall be deemed to be an offer to acquire a share.

(10) A reference to a person who holds shares includes a reference to a person who holds a right to acquire a share or an interest in a share under an option.

(11)

(11) A reference to a person associated No. 61, 1971 with an offeror or an invitor is—

- (a) a reference to a corporation that, by virtue of subsection (5) of section six, is deemed to be related to the offeror or invitor;
- (b) in relation to an offer or invitation relating to shares in a company, a reference to a person—
  - (i) who is under an obligation, whether formal or informal, to act in accordance with the directions of, or with the authority of, the offeror or invitor;
  - (ii) who is under an obligation, whether formal or informal, to act in accordance with the directions of, or with the authority of, a person in accordance with whose directions or under whose authority the offeror or invitor is under an obligation, whether formal or informal, to act in relation to the offer or invitation;
  - (iii) who has an agreement, arrangement or undertaking, whether formal or informal, and whether express or implied with the offeror or invitor by reason of which he or the offeror or invitor may exercise, or directly or indirectly control the exercise of, the voting power attached to a share in the company; or
  - (iv) in accordance with whose directions, or under whose authority, the offeror or invitor is under an obligation, whether formal or informal, to act in relation to the offer or invitation; or

(c)

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(c) a reference to a person who is associated, whether formally or informally, with the offeror or invitor in relation to an offer or invitation relating to shares in a company made or proposed to be made by the offeror or invitor.

(12) For the purposes of subsection (11) of this section, where two or more persons constitute an offeror or an invitor a person is associated with the offeror or invitor if he is associated with any of those persons.

**Application of Part.**

180B. (1) The application of this Part extends to and in relation to all natural persons, whether resident in the State or in Australia or not and whether Australian citizens or not, and to all bodies corporate and unincorporate, whether incorporated or carrying on business in the State or in Australia or not, and extends to acts done or omitted to be done outside the State, whether in Australia or not.

(2) Nothing in subsection (1) of this section extends the definition of "company" in subsection (2) of section 180A so as to include a body corporate that is not incorporated in the State.

**Take-over offers.**

180C. (1) Subject to subsection (2) of this section, a person, or two or more persons together, shall not dispatch an offer to acquire shares in a company unless—

(a) the offer is in writing that—

(i) specifies the number and other particulars of the shares in the company proposed to be acquired during a period specified in the offer;

(ii)

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- (ii) specifies the terms of that offer and No. 61, 1971 of all other offers dispatched, or to be dispatched, in respect of shares referred to in subparagraph (i) of this paragraph;
- (iii) specifies the number and other particulars of the shares in the company to which that person, or any of those persons, was entitled immediately before the offer was dispatched;
- (iv) sets out how and by what date the obligations of the offeror are to be satisfied;
- (v) sets out all other particulars of the offer, including terms that this Part requires to be terms;
- (vi) bears a date which is not more than three days before the date on which the offer is dispatched; and
- (vii) is accompanied by a copy of the statement referred to in subparagraph (i) of paragraph (b) of this subsection and, if the offeree company has given to the offeror a Part B statement, a copy of that statement;

(b) the offeror has, not earlier than twenty-eight days and not later than fourteen days before the offer is dispatched, given to the offeree company—

- (i) a Part A statement relating to that offer that is signed, where the offeror is a natural person or

includes

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includes one or more natural persons, by that person or by each of those persons and, where the offeror is or includes one or more corporations, by not less than two directors of the corporation, or by two directors of each of those corporations, authorised so to sign pursuant to a resolution passed at a meeting of the directors, or in the case of a corporation that has only one director, by that director; and

- (ii) in respect of each report referred to in paragraph (e) of clause 2 of Part A of the Tenth Schedule that is set out in the Part A statement referred to in subparagraph (i) of this paragraph, a notice in writing signed by the person or persons by whom the report is made to the effect that the person consents, or that each of those persons consents, to the inclusion of the report in the statement in the form and context in which it is included; and
- (c) the offeror has, before the offer is dispatched, lodged with the Commission a copy of the Part A statement given under paragraph (b) of this subsection.

(2) Subsection (1) of this section does not apply to—

- (a) an offer to acquire voting shares in a company if the number derived from the formula set out in section 180D calculated as at the time immediately before the offer is dispatched is less than fifteen;

(b)

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(b) an offer to acquire shares in a company **No. 61, 1971** (not being an offer that is dispatched at the same time as another offer to acquire shares in the company is dispatched) if—

- (i) the offeror has not or, where two or more persons constitute the offeror, none of those persons has; and
- (ii) no person associated with the offeror has,

dispatched offers to acquire shares in the company, or an invitation or invitations relating to the acquisition of shares in the company, to more than three members of the company within the period of four months immediately preceding the dispatch of the first-mentioned offer;

(c) an offer to acquire shares in a company that are not voting shares, unless the offeror proposes to acquire—

- (i) all the shares in the company that are not voting shares; or
- (ii) all the shares, not being voting shares, included in a class of shares in the company,

other than shares to which the offeror, or, where two or more persons constitute the offeror, any of those persons, is entitled immediately before the offer is dispatched;

(d) an offer to acquire shares in a company that does not have more than fifteen members; or

(e)

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(e) an offer to acquire shares in a proprietary company that has more than fifteen members if the members of the company have consented in writing to the provisions of this Part not applying to or with respect to the offer.

(3) A person, or two or more persons together, shall not dispatch an invitation relating to shares in a company unless—

(a) the invitation is in writing that—

- (i) specifies the maximum number and other particulars of the shares in the company proposed to be acquired during a period specified in the invitation;
- (ii) specifies the terms upon which the shares referred to in subparagraph (i) of this paragraph are proposed to be acquired;
- (iii) specifies the number and other particulars of the shares in the company to which that person or any of those persons was entitled immediately before the invitation was dispatched;
- (iv) bears a date that is not more than three days before the invitation is dispatched; and
- (v) is accompanied by a copy of the statement referred to in subparagraph (i) of paragraph (b) of this subsection and, if the offeree company has given to the invitor a Part B statement, by a copy of that statement;

(b)

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(b) the invitor has, not earlier than twenty-eight days and not later than fourteen days before the invitation is dispatched, given to the offeree company—

- (i) a Part A statement relating to that invitation that is signed, where the invitor is a natural person or includes one or more natural persons, by that person or by each of those persons and, where the invitor is or includes one or more corporations, by not less than two directors of the corporation, or by two directors of each of those corporations, authorised so to sign pursuant to a resolution passed at a meeting of the directors, or in the case of a corporation that has only one director, by that director; and
- (ii) in respect of each report referred to in paragraph (e) of clause 2 of Part A of the Tenth Schedule that is set out in the Part A statement, a notice in writing signed by the person or persons by whom the report is made to the effect that the person consents or that each of those persons consents to the inclusion of the report in the statement in the form and context in which it is included;

(c) the invitor has, before the invitation is dispatched, lodged with the Commission a copy of the Part A statement given under paragraph (b) of this subsection;

(d)

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- (d) the invitor includes in the invitation, or dispatches with the invitation, a statement setting out how and by what date the obligations of the invitor arising from his acceptance of an offer made by an offeree are to be satisfied; and
- (e) the invitor includes in the invitation, or dispatches with the invitation, a statement setting out all other particulars of the invitation, including the matters that have effect under section 180F.

(4) Any of the following persons, that is to say—

- (a) an invitor who has dispatched an invitation relating to shares in a company;
- (b) a person associated with such an invitor; or
- (c) where two or more persons constitute such an invitor—any of those persons,

shall not, during the period specified in the invitation or during the period of four months after the invitation is dispatched, whichever is the longer, acquire for valuable consideration (otherwise than in pursuance of a take-over offer or in the ordinary course of trading at an official meeting of a stock exchange), a share in the company if the number derived from the formula set out in section 180D, calculated as at the time immediately before the acquisition of the share, is fifteen or more.

(5) The person who records the minute of a resolution referred to in subparagraph (i) of paragraph (b) of subsection (1) or (3) of this

section

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section shall record in the minute the name of any **No. 61, 1971** director who is absent from the meeting when the resolution is passed, the name of any director who votes against the resolution and the name of any director who is present when the resolution is passed and abstains from voting on the resolution.

(6) In subsections (3) and (4) of this section "invitation" does not include—

- (a) an invitation relating to voting shares in a company if the number derived from the formula set out in section 180D, calculated as at the time immediately before the invitation is dispatched, is less than fifteen;
- (b) an invitation relating to shares in a company (not being an invitation that is made to more than three people or that is dispatched at the same time as another invitation relating to shares in the company is dispatched) if—
  - (i) the invitor has not, or, where two or more persons constitute the invitor, none of those persons has; and
  - (ii) no person associated with the invitor has,

dispatched offers to acquire shares in the company or an invitation or invitations relating to the acquisition of shares in the company to more than three members of the company within the period of four months immediately preceding the dispatch of the first-mentioned invitation;

(c)

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(c) an invitation relating to shares in a company that are not voting shares unless the invitor proposes to acquire—

- (i) all the shares in the company that are not voting shares; or
- (ii) all the shares, not being voting shares, included in a class of shares in the company,

other than shares to which the invitor or, where two or more persons constitute the invitor, any of those persons, is entitled immediately before the invitation is dispatched; or

(d) an invitation relating to shares in a company that does not have more than fifteen members.

(7) In this section, "offer" does not include an offer made at an official meeting of a stock exchange in the ordinary course of trading on the stock exchange.

(8) For the purposes of this section—

- (a) an invitation relating to the acquisition of shares in a company that is dispatched otherwise than to a person or persons named in the invitation shall be deemed to be dispatched to more than three members of the company; and
- (b) an offer or invitation that is dispatched within three days before or within three days after another offer or invitation is dispatched shall be deemed to be dispatched at the same time as that other offer or invitation.

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180D. (1) For the purposes of section 180C the No. 61, 1971

formula is the formula 
$$\frac{100 (A + B)}{C}$$
, where—

Formula for  
calculating  
voting  
power

(a) A is a number equal to the maximum number of votes that might be exercised at a general meeting of the company in respect of the voting shares in the company to which the offeror is entitled or, where two or more persons constitute the offeror, the aggregate of the number of—

(i) voting shares in the company to which each of those persons is entitled; and

(ii) if one or more of those persons is entitled to voting shares in the company with another person, those shares;

(b) B is a number equal to the maximum number of votes that might be exercised at a general meeting of the company in respect of—

(i) voting shares in the company, not being voting shares referred to in paragraph (a) of this subsection, in respect of which the offeror or a person associated with the offeror (or, where two or more persons constitute the offeror, any of those persons) has, during the preceding period of four months dispatched offers (being offers that have not been withdrawn) or proposes to dispatch offers during the ensuing period of four months; and

(ii) voting shares in the company, not being voting shares referred to in subparagraph (i) of this paragraph, that the offeror or a person associated

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associated with the offeror (or, where two or more persons constitute the offeror, any of those persons) might acquire for valuable consideration (otherwise than in the ordinary course of trading at an official meeting of a stock exchange) as the result of an invitation or invitations made by any of those persons during the preceding period of four months or as the result of an invitation or invitations proposed to be made by any of those persons during the ensuing period of four months; and

(c) C is a number equal to the maximum number of votes that might be exercised at a general meeting of the company in respect of all the voting shares in the company.

(2) For the purposes of paragraph (a) of subsection (1) of this section, a voting share—

- (a) that a person referred to in that paragraph has a right to acquire; or
- (b) a relevant interest in which a person so referred to has a right to acquire,

shall be deemed to be a voting share to which that person is entitled.

(3) For the purposes of paragraph (b) of subsection (1) of this section, votes that might be exercised in respect of voting shares to which the offeror, or, where two or more persons constitute the offeror, any of those persons, is entitled shall be disregarded.

(4) For the purposes of this section, voting shares shall be deemed to be held by such person or persons and in such manner as would

enable

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enable the greatest number of votes to be exercised **No. 61, 1971** at a general meeting of the company in respect of them.

180E. (1) The following subsections of this <sup>Terms and</sup> section have effect in respect of a take-over offer <sup>conditions of</sup> that is constituted by an offer. <sup>take-over offers.</sup>

(2) It shall be a term of the take-over offer that it will, unless withdrawn, remain open during a period ending on a specified date, being a date that is not less than one month after the date that the take-over offer bears.

(3) The take-over offer shall not be conditional upon the offeree approving or consenting to a payment or other benefit being made or given to a director of the offeree company, or of a corporation that is deemed by virtue of subsection (5) of section six to be related to the offeree company, as compensation for loss of office or as consideration for or in connection with his retirement from office.

(4) If a take-over offer under a take-over scheme is withdrawn, a contract arising from the acceptance of any other take-over offer under the take-over scheme is voidable at the option of the offeree by notice in writing given to the offeror not later than one month after the first-mentioned take-over offer is withdrawn.

(5) Where a take-over offer is subject to a condition in relation to which section 180N applies, the offer shall specify a date, being a date that is not less than seven days before the end of the period during which the offer remains open, for the publication of the notice referred to in subsection (3) of that section.

180F. (1) The following subsections of this <sup>Terms and</sup> section have effect in respect of a take-over offer <sup>conditions of</sup> that is constituted by an invitation. <sup>invitations.</sup>

(2)

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(2) The invitation shall be expressed to remain open until a specified date, being a date that is not less than one month after the date that the invitation bears.

(3) The invitor shall not indicate or imply, whether by statement in the invitation or in any other manner, that an offer made by an offeree will not be accepted by the invitor unless the offeree approves or consents to a payment or other benefit being made or given to a director of the offeree company, or of a corporation that is deemed by virtue of subsection (5) of section six to be related to the offeree company, as compensation for loss of office or as consideration for or in connection with his retirement from office.

(4) The invitor shall not—

- (a) indicate or imply, whether by statement in the invitation or in any other manner, that the order in which offers made by offerees are dispatched or received may have an effect in relation to the determination of the offers that will be accepted;
- (b) accept an offer to dispose of shares made in consequence of the invitation before the expiration of the period during which the invitation is expressed, pursuant to subsection (2) of this section, to remain open; or
- (c) accept an offer or offers made in consequence of the invitation in such a manner as to be unfair to persons who so made offers.

(5) If the invitor accepts an offer for the reason only that it was received before another offer, he shall, unless he satisfies the Court that he had reasonable grounds for doing so, be deemed, for the purposes of paragraph (c) of subsection

(4)

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(4) of this section, to have accepted that offer No. 61, 1971 in such a manner as to be unfair to other persons who made offers in consequence of the invitation.

180G. (1) Where an offeree company receives a Statement by Part A statement given under section 180C, the <sup>offeree</sup> company shall—

- (a) not later than fourteen days after receipt of the statement, give to the offeror; or
- (b) not later than fourteen days after the first take-over offer, or the invitation, to which the statement relates, as the case may be, is dispatched, give to each holder of shares to which the statement refers,

a Part B statement signed by all the directors of the company or by not less than two directors of the company authorised to sign it pursuant to a resolution passed at a meeting of the directors or, in the case of a corporation that has only one director, by that director.

(2) The Part B statement may contain such information in addition to that referred to in Part B of the Tenth Schedule as the directors of the offeree company think fit.

(3) The offeree company shall, forthwith after giving a Part B statement under subsection (1) of this section, lodge with the Commission—

- (a) a copy of the statement; and
- (b) where the statement is not signed by all the directors of the company, a copy of the resolution passed at a meeting of the directors authorising the signing of the statement and a statement showing the names of the directors who were present at the meeting at which the resolution was agreed to and the names of any directors who voted against the resolution.

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offeree  
company.**

180H. (1) Where a take-over offer has been dispatched, the offeror shall—

- (a) on the day on which the take-over offer is dispatched, give notice in writing to the offeree company that the offer has been dispatched and of the date that it bears; and
- (b) on the same day or, if the office of the Commission is not open on that day, on the next day on which that office is open, lodge with the Commission a copy of the notice.

(2) Subsection (1) of this section does not apply where the requirements of that subsection have already been complied with in respect of another take-over offer under the take-over scheme.

**Liability  
for mis-  
statements  
in Part A  
statements.**

180J. (1) Where—

- (a) there is, in a statement that purports to be a Part A statement given under section 180C, matter that is false in a material particular or materially misleading in the form and context in which it appears; or
- (b) there is an omission of material matter from such a statement,

a person to whom this section applies is, subject to this section, guilty of an offence against this Act.

**Penalty :** Two thousand dollars or imprisonment for one year, or both.

(2) A person to whom this section applies is, in the circumstances referred to in subsection (1) of this section, whether he has been convicted of an offence under that subsection or not, liable, subject to this section, to pay compensation to a person who accepts a take-over offer on the faith of the contents of the statement for any loss or damage sustained by reason of the false or misleading matter or by reason of the omission.

(3)

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(3) The persons to whom this section No. 61, 1971 applies are—

- (a) the offeror;
- (b) where the offeror is or includes a corporation, a person who was a director of that corporation at the time the statement was given, not being—
  - (i) a director who was not present at the meeting at which the resolution authorising the signing of the statement was agreed to;
  - (ii) a director who voted against that resolution; or
  - (iii) a director who abstains from voting on the resolution; and
- (c) subject to subsection (4) of this section, a person a notice of whose consent to the inclusion in the statement of a report made by him has been given to the offeree company under paragraph (b) of subsection (1), or under paragraph (b) of subsection (3), of section 180C.

(4) A person referred to in paragraph (c) of subsection (3) of this section is guilty of an offence under subsection (1) of this section, and liable to pay compensation under subsection (2) of this section, only in respect of false or misleading matter in the report referred to in that paragraph or an omission of material matter from that report.

(5) It is a defence to a prosecution of a person for an offence under subsection (1) of this section if the person proves—

- (a) that, when the statement was given, he—
  - (i) believed on reasonable grounds that the false matter was true;
  - (ii)

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(ii) believed on reasonable grounds that the misleading matter was not misleading;

(iii) in the case of an omission, believed on reasonable grounds that no material matter had been omitted; or

(iv) in the case of an omission, did not know that the omitted matter was material; and

(b) that—

(i) on the date of the information or summons, he so believed or did not so know; or

(ii) before that date, he ceased so to believe or came to know that the omitted matter was material, and forthwith gave reasonable public notice containing such matters as were necessary to correct the false or misleading statement or the omission.

(6) It is a defence to an action under subsection (2) of this section if the defendant proves—

(a) any matter referred to in paragraph (a) of subsection (5) of this section; and

(b) that—

(i) when the plaintiff accepted the take-over offer, the defendant believed as mentioned in subparagraph (i), (ii) or (iii) of paragraph (a) of subsection (5) of this section or did not know that the omitted matter was material; or

(ii)

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(ii) before the plaintiff accepted the No. 61,1971 take-over offer, the defendant ceased so to believe or came to know that the omitted matter was material, and forthwith gave reasonable public notice containing such matters as were necessary to correct the false or misleading statement or the omission.

(7) In this section, a reference to a statement includes a reference to a statement as modified by modifications referred to in subsection (6) of section 180L.

(8) Nothing in this section affects any cause of action existing apart from this section.

180K. Where, at the time when a take-over offer is made to a person or at any time during the period during which the offer is open, another person is, or is entitled to be registered as, the holder of shares to which the offer relates, then, except in so far as the offer otherwise provides—

- (a) a corresponding take-over offer shall be deemed to have been made to that other person in respect of those shares; and
- (b) a corresponding take-over offer shall be deemed to have been made to the first-mentioned person in respect of any other shares to which the offer relates.

180L. (1) An offeror may not vary a take-over offer except in accordance with this section.

(2)

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(2) An offeror may vary a take-over offer that is constituted by an offer by doing one or more of the following in relation to the whole or a part of the consideration that is offered for the shares proposed to be acquired :—

- (a) where a cash sum is so offered—by increasing the amount of that sum ;
- (b) where shares are so offered—by increasing the number of those shares ;
- (c) where stock is so offered—by increasing the amount of that stock ;
- (d) where debentures are so offered—by increasing the rate of interest payable under those debentures ;
- (e) where debentures are so offered—by increasing the amount of those debentures ;
- (f) where an option to acquire unissued shares is so offered—by varying the option by increasing the number of unissued shares that may be acquired under that option.

(3) An offeror may vary a take-over offer by extending the period during which it remains open and, where an offeror so varies a take-over offer that contains a condition in relation to which section 180N applies, he may correspondingly vary the date specified for the publication of the notice referred to in subsection (3) of that section.

(4) Where the consideration that is offered for the shares proposed to be acquired under a take-over offer is varied under subsection (2) of this section, each person whose shares are acquired before or after the variation under a like take-over offer (that is to say, a take-over offer that, disregarding the person who is the offeree and the number of shares to which the offer relates, is the same as the first-mentioned take-over offer) is entitled to receive consideration as varied accordingly.

(5)

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(5) Where an offeror varies a take-over No. 61, 1971 offer, he shall forthwith give to the offeree company, to the offeree and to each other offeree to whom a like take-over offer within the meaning of subsection (4) of this section has been made a notice in writing in accordance with subsection (6) of this section and shall forthwith lodge with the Commission a copy of the notice.

(6) The notice shall set out in an appropriate form particulars of such modifications of the Part A statement given under section 180C as are necessary having regard to the variation.

180M. (1) While a take-over offer under a take-over scheme remains open—

- (a) the offeror;
- (b) where the offeror is or includes a corporation, a corporation that, by virtue of subsection (5) of section six is deemed to be related to the first-mentioned corporation;
- (c) a person who has an agreement, arrangement or undertaking whether formal or informal and whether express or implied with the offeror by reason of which he or the offeror may exercise, or directly or indirectly control the exercise of, the voting power attached to a share in the company to which the take-over scheme relates; or
- (d) a person in accordance with whose directions, or under whose authority, the offeror is under an obligation, whether formal or informal, to act in relation to the take-over scheme,

Offerees not  
to be given  
benefits  
except  
under  
take-over  
scheme.

shall not, except in pursuance of a variation made in accordance with section 180L, give, offer to give or agree to give to a person whose shares may be

acquired

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acquired under the take-over scheme any benefit (whether by payment of cash or otherwise) not provided for in the particulars of the take-over scheme as set out in the Part A statement given in respect of the take-over scheme under section 180c.

(2) For the purposes of this section, where two or more persons constitute an offeror, a reference in subsection (1) of this section to the offeror shall be read as a reference to each of those persons.

(3) Nothing in this section prevents the acquisition of shares in a company at an official meeting of a stock exchange in the ordinary course of trading on the stock exchange.

Declaration  
where  
take-over  
offers are  
conditional.

180N. (1) Where two or more take-over offers that, disregarding the persons who are the offerees and the number of shares to which the offers relate, are the same are subject to a particular condition, the offeror may not declare any of the take-over offers to be free from the condition unless it is a term of each offer that he may do so not less than seven days before the end of the period during which it is open.

(2) If the offeror declares one of the offers to be free from the condition, he shall forthwith declare the other offers to be free from the condition and shall forthwith cause to be published a notice—

(a) stating that the offers are free from the condition; and

(b) specifying—

(i) the proportion that the number of shares to which, to his knowledge, he is entitled at the time of lodging

the

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the notice for publication bears to No. 61, 1971  
the number of issued shares in the  
company; or

- (ii) if offers were made in respect of shares included in one or more classes of shares—the proportion that the number of shares included in that class or in each of those classes to which he is so entitled bears to the number of issued shares included in that class, or in each of those classes, as the case may be.

(3) The offeror shall, whether or not he has caused a notice to be published under subsection (2) of this section, cause to be published, on the date specified in the take-over offer in accordance with subsection (5) of section 180E, a notice—

- (a) stating whether the offeror has declared the offers to be free from the condition; or
- (b) stating whether, to his knowledge, the condition was, at the time of lodging the notice for publication, fulfilled or not.

(4) Where a notice under subsection (3) of this section states that the offeror has declared the offers to be free from the condition or that the condition has been fulfilled, the notice shall also specify—

- (a) the proportion that the number of shares to which, to his knowledge, he is entitled at the time of lodging the notice for publication bears to the number of issued shares in the company; or
- (b) if offers were made in respect of shares included in one or more classes of shares—the proportion that the number of shares included in that class or in each of those classes to which he is so entitled bears to

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to the number of issued shares included in that class, or in each of those classes, as the case may be.

(5) A notice under subsection (2) or (3) of this section shall be published in a newspaper circulating generally in the State and, if shares in the offeree company are listed for quotation on the official list of a stock exchange in another State or in a Territory of the Commonwealth and that newspaper does not circulate generally in that State or Territory, in a newspaper that does so circulate.

(6) On the first day on which a notice under subsection (2) or (3) of this section is lodged for publication, the offeror shall send, by telegraph, a message to the effect of the notice to each stock exchange on the official list of which shares in the offeree company are listed for quotation.

(7) Where by this section an offeror is required to cause a notice to be published and, due to circumstances beyond the control of the offeror, the notice is not published in accordance with that requirement, the requirement shall be deemed to have been complied with if the offeror—

- (a) did all things that would, but for those circumstances, have resulted in publication of the notice in accordance with that requirement; and
- (b) causes the notice to be published on the first practicable date after those circumstances cease to exist.

(8) Where a condition referred to in subsection (1) of this section has not been fulfilled and a notice has not been published as required by subsection (3) of this section, all contracts formed by the acceptance of take-over offers under the take-over scheme are void.

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180P. Notwithstanding anything in the articles of No. 61, 1971 a company, or in the document by which a company is constituted, the directors of the company are entitled to have refunded to them by the company any expenses reasonably incurred by them in the interest of the members of the company in relation to a take-over scheme involving the acquisition of shares in the company.

180Q. (1) A person who does not intend to make an offer in the nature of a take-over offer shall not give notice or publicly announce that he intends to make a take-over offer or an offer in the nature of a take-over offer whether under this Act or otherwise.

(2) Persons who do not intend to make an offer in the nature of a take-over offer shall not give notice or publicly announce that they intend to make together a take-over offer or an offer in the nature of a take-over offer whether under this Act or otherwise.

(3) A person shall not make a take-over offer or an offer in the nature of a take-over offer, or give notice or publicly announce that he intends to make such an offer, if he has no reasonable or probable grounds for believing—

- (a) that he will be able to perform his obligations if the offer is accepted; or
- (b) in the case of a take-over offer, or an offer in the nature of a take-over offer, that is constituted by an invitation—that he will be able to perform his obligations if he accepts some or all of the offers that may be made to him in consequence of the invitation.

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(4) Persons shall not together make a take-over offer or an offer in the nature of a take-over offer, or give notice or publicly announce that they intend to make together such an offer, if they have no reasonable or probable grounds for believing—

- (a) that they will be able to perform their obligations if the offer is accepted; or
- (b) in the case of a take-over offer, or an offer in the nature of a take-over offer, that is constituted by an invitation—that they will be able to perform their obligations if they accept some or all of the offers that may be made to them in consequence of the invitation.

Orders to  
protect  
rights under  
take-over  
schemes.

180R. (1) Where two or more take-over offers that constitute a take-over scheme have been made, the Court may, on the application of the Commission or of the offeree company, where the Court is satisfied that a provision of this Part has not been complied with, make such orders as it thinks necessary or expedient to protect the rights of a person affected by the take-over scheme, including, but without limiting the generality of the foregoing, one or more of the following orders :—

- (a) an order restraining the registration of transfers of shares in the offeree company;
- (b) an order restraining the disposal of any interest in shares in the offeree company;
- (c) an order cancelling a contract, arrangement or offer relating to the take-over scheme;
- (d) an order declaring a contract, arrangement or offer relating to the take-over scheme to be voidable; and

(e)

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(e) for the purpose of securing compliance with No. 61, 1971 any other order under this section, an order directing a person to do or refrain from doing a specified act.

(2) A person shall not contravene or fail to comply with an order under subsection (1) of this section that is applicable to him.

(3) Subsection (2) of this section does not affect the powers of the Court in relation to the punishment of contempts of the Court.

180s. (1) Where a person has failed to comply with a provision of this Part and the Court is satisfied that the non-compliance was due to inadvertence, mistake or circumstances beyond his control and that the failure ought to be excused, or is satisfied on any other grounds that the failure ought to be excused, the Court may, on the application of an interested person, make such order as it thinks fit declaring any act or matter not to be invalid by reason of the failure to comply and declaring any act or matter to have force or effect as if there had been no such failure.

(2) An order under subsection (1) of this section may include such ancillary or consequential provisions as the Court thinks just.

180T. (1) The Court shall, before making an order under section 180R or 180s, satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice any person.

(2) The Court may, before making an order under section 180R or 180s, direct that notice of the application be given to such persons

as

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as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

(3) The Court may rescind, vary or discharge an order made by it under section 180R or 180S or suspend the operation of such an order.

**Regulations  
may be made  
with respect  
to certain  
matters.**

180U. (1) The regulations may amend the Tenth Schedule, either by omitting or altering any requirement set out in that Schedule or by adding additional requirements, and the Tenth Schedule, as so amended, shall be the Tenth Schedule to this Act.

(2) The regulations may require the lodging, as prescribed, with one or more stock exchanges, or with the Commission, or with both, of—

- (a) a signed copy of a prescribed document being a document made or given in pursuance of this Part; or
- (b) a notice in the prescribed form, and containing the prescribed particulars, of such a document.

**Power to  
exempt from  
compliance  
with Part.**

180v. The Commission may, by order published in the Gazette, exempt a person, as specified in the order and subject to such terms and conditions (if any) as are specified in the order, from compliance with all or any of the provisions of this Part or of the requirements set out in the Tenth Schedule.

**Offences.**

180w. (1) A person who contravenes or fails to comply with a provision of this Part is guilty of an offence against this Act.

(2)

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(2) If a take-over offer or an invitation No. 61, 1971 is dispatched in contravention of this Part, the offeror, or, where the offeror is two or more persons, each of those persons, is guilty of an offence against this Act.

(3) Where an offence against this Part is committed by a corporation, an officer of the corporation who is in default is guilty of an offence against this Act.

(4) The penalty for an offence against this Act arising under this section is a fine not exceeding one thousand dollars or imprisonment for a period not exceeding six months, or both.

(5) Subsection (1) of section three hundred and seventy-nine does not apply in relation to this Part.

180x. (1) For the purposes of this section—

(a) where two or more take-over offers (not being take-over offers constituted by invitations) that constitute a take-over scheme have been made in respect of all the shares included in a class of shares (other than shares to which the offeror, or, where two or more persons constitute the offeror, any of those persons, is entitled), the shares in respect of which those take-over offers were made are shares subject to acquisition ;

(b) outstanding shares are shares subject to acquisition in respect of which a take-over offer was made but has not been accepted ; and

(c) a dissenting offeree is a person who is, or is entitled to be registered as, a holder of outstanding shares.

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(2) Where the shares in a company are not divided into two or more classes, those shares shall for the purposes of this section be deemed to constitute a class.

(3) Where—

- (a) take-over offers in respect of shares included in the class of shares referred to in paragraph (a) of subsection (1) of this section representing not less than nine-tenths of the nominal amount of shares subject to acquisition have been accepted; and
- (b) if the shares subject to acquisition represent less than nine-tenths of the nominal amount of all the shares included in that class—take-over offers in respect of those shares have been accepted by not less than three-quarters of the offerees,

the offeror may, within two months after the last day upon which a take-over offer under the take-over scheme was open for acceptance (any variation under subsection (3) of section 180L being disregarded), give notice as prescribed to a dissenting offeree to the effect that take-over offers have been accepted as mentioned in paragraphs (a) and (b) of this subsection and that the offeror desires to acquire the outstanding shares held by the dissenting offeree.

(4) For the purposes of paragraph (b) of subsection (3) of this section, two or more persons holding jointly shares in respect of which a take-over offer has been made shall be deemed to be one offeree.

(5) Where such a notice is so given, the offeror is entitled and bound, subject to this section, to acquire those shares on the terms applicable under the take-over offer.

(6)

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(6) Subsection (5) of this section does No. 61, 1971 not have effect where, on an application made by the dissenting offeree—

- (a) within one month after the date on which the notice was given; or
- (b) within fourteen days after a statement is supplied to the dissenting offeree under subsection (9) of this section,

whichever is the later, the Court orders that that subsection is not to have effect.

(7) Where alternative terms were offered under the take-over offer, the dissenting offeree may, by notice in writing given to the offeror—

- (a) within one month after the date on which the notice was given under subsection (3) of this section; or
- (b) within fourteen days after the giving to him of a statement under subsection (9) of this section,

whichever is the later, specify which of those terms he prefers and the terms so specified shall apply to the acquisition of the outstanding shares held by him.

(8) If the dissenting offeree fails to give the notice within the time allowed by subsection (7) of this section, the offeror may, unless the Court otherwise orders, determine which of those terms is to apply to the acquisition of the outstanding shares of the dissenting offeree.

(9) Where the offeror has given notice under subsection (3) of this section, the dissenting offeree may, by notice in writing served on the offeror within one month after the date on which the first-mentioned notice was given, ask for a statement in writing of the names and addresses of all other dissenting offerees and the offeror shall forthwith give a statement in writing accordingly.

(10)

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(10) Where the offeror has given notice under subsection (3) of this section and the Court has not, on an application made by the dissenting offeree, ordered to the contrary, the offeror shall, within fourteen days after—

- (a) the expiration of one month after the notice was given;
- (b) the expiration of fourteen days after the last day on which a statement under subsection (9) of this section was given; or
- (c) where an application had been made to the Court by the dissenting offeree—the application has been disposed of,

whichever last happens, give a copy of the notice to the offeree company together with an instrument of transfer of the outstanding shares held by the dissenting offeree executed on behalf of the dissenting offeree by a person appointed by the offeror and also executed by the offeror and pay, allot or transfer to the offeree company the consideration for the transfer and the offeree company shall thereupon register the offeror as the holder of those shares.

(11) The consideration so received shall be held by the offeree company in trust for the dissenting offeree.

(12) Where consideration held as provided by subsection (11) of this section consists of or includes money, that money shall be paid into a bank account established for that purpose only.

(13) Where money or other property is held in trust by a company for a person under this section and has been so held for not less than two years, the company shall, before the expiration of

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ten years after the date on which the money or No. 61, 1971 other property was received by the company, pay the money or transfer the property and any accretions (or, if any property has been substituted for the whole or any part of that sum or property—that property) to the Treasurer.

(14) The Treasurer shall sell or dispose of any property other than money so received and any property that becomes substituted for the whole or any part of that property as he thinks fit and shall deal with the proceeds of the sale or disposal and any money so received and any income derived from that property as if they were moneys paid to him under the Unclaimed Moneys Act, 1917.

(15) Where any property other than money transferred to the Treasurer under this section includes shares in a corporation, the Treasurer is not subject to any obligation—

- (a) to pay any calls;
- (b) to make any contribution to the debts and liabilities of the corporation; or
- (c) to discharge any other liability,

in respect of the shares, whether the obligation arises before or after the date of the transfer, but this subsection does not affect the right of the corporation to forfeit a share.

(16) Where, under the law of another State or of a Territory of the Commonwealth that corresponds to this section, shares in a company are transferred to an authority specified in that law, that authority is not subject to any obligation as specified in subsection (15) of this section in respect of those shares, but this subsection does not affect a right of the company to forfeit a share.

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(17) Neither the State nor the Treasurer is liable for any loss or damage suffered by a person arising out of the exercise of any of the powers of the Treasurer under this section.

Rights of  
remaining  
shareholders.

180Y. (1) The following subsections of this section have effect where the aggregate nominal value of—

- (a) shares included in a class of shares in an offeree company to which the offeror, or, where two or more persons constitute the offeror, any of those persons, becomes entitled in consequence of take-over offers under a take-over scheme; and
- (b) any other shares included in that class to which the offeror, or, where two or more persons constitute the offeror, any of those persons, was entitled before the take-over offers were dispatched,

is not less than nine-tenths of the nominal value of the issued shares included in that class.

(2) The offeror shall, within one month after the date on which the aggregate nominal value of the shares referred to in paragraphs (a) and (b) of subsection (1) of this section becomes not less than nine-tenths of the nominal value of the shares last-mentioned in that subsection, give notice of the fact as prescribed to the holders of the remaining shares included in that class who, when the notice is given, had not been given notice under subsection (3) of section 180X.

(3) A holder of remaining shares referred to in subsection (2) of this section may, within three months after the giving of notice to him under that subsection, require the offeror to

acquire

acquire shares included in that class of which he is the holder and, where alternative terms were offered in respect of shares included in that class in take-over offers under the take-over scheme, elect which of those terms he will accept.

(4) Where a shareholder gives notice under subsection (3) of this section with respect to his shares, the offeror is entitled and bound to acquire those shares—

- (a) on the terms on which shares were acquired under the take-over scheme and, where alternative terms were offered to the holders of those shares, on the terms for which the shareholder has elected or where he has not so elected for whichever of the terms the offeror determines; or
- (b) on such other terms as are agreed or as the Court, on the application of the offeror or the shareholder, thinks fit to order.

(5) Where the shares in a company are not divided into two or more classes, those shares shall be deemed to constitute a class.

(i) by omitting section one hundred and eighty-four; Sec. 184.  
 (Take-over offers.)

(j) by omitting section one hundred and eighty-five Subst.  
 and by inserting in lieu thereof the following sec. 185.  
 section :—

185. (1) Where a scheme or contract (not being a take-over scheme as referred to in subsection (4) of section 180A) involving a transfer of the shares included in a class of shares in a company (in this section referred to as "the transferor company") to a person (in this section referred to as "the transferee person") in accordance with the scheme or contract, the transferor company shall, before the transfer, obtain the approval of the shareholders of the transferor company by a majority of the votes cast.

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to as "the transferee") has, within four months after the making of the offer in that behalf by the transferee been approved by the holders of not less than nine-tenths in nominal value of the shares included in that class of shares (other than shares already held at the date of the offer by or by a nominee for the transferee or, where the transferee is a company, its subsidiary), the transferee may at any time within two months after the offer has been so approved give notice as prescribed to a dissenting shareholder that he desires to acquire the shares of that shareholder and, when such a notice is given, the transferee is, unless on an application made by a dissenting shareholder within one month after the date on which the notice was given or within fourteen days after a statement is supplied to a dissenting shareholder in pursuance of subsection (5) of this section (whichever is the later), the Court thinks fit to order otherwise, entitled and bound, subject to this section, 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.

(2) Where the shares in a company are not divided into two or more classes, those shares shall for the purposes of this section be deemed to constitute a class.

(3) Where alternative terms were offered to the approving shareholders, the dissenting shareholder is entitled to elect not later than the expiration of one month after the date on which the notice is given under subsection (1) of this section or fourteen days after the date on which a statement is supplied in pursuance of subsection (5) of this section (whichever is the later) which of those terms he prefers and if the dissenting shareholder fails to make the election within the time allowed by this subsection, the transferee may, unless the Court

otherwise

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otherwise orders, determine which of those terms is No. 61, 1971 to apply to the acquisition of the shares of the dissenting shareholder.

(4) Notwithstanding anything in subsection (1) of this section, where shares in the transferor company of the same class as the shares whose transfer is involved are already held as mentioned in subsection (1) of this section, to a nominal value greater than one-tenth of the aggregate of their nominal value and that of the shares (other than those already held as mentioned in subsection (1) of this section) whose transfer is involved, the provisions of subsection (1) of this section do not apply unless—

- (a) the transferee offers the same terms to all holders of the shares (other than those already held as mentioned in subsection (1) of this section) the transfer of which is involved; and
- (b) the holders who approve the scheme or contract, besides holding not less than nine-tenths in nominal value of the shares (other than those already held as mentioned in subsection (1) of this section) the transfer of which is involved, are not less than three-fourths in number of the holders of those shares.

(5) Where the transferee has given notice to a dissenting shareholder that he desires to acquire that shareholder's shares, that shareholder is entitled to require the transferee, by a demand in writing served on the transferee within one month after the date on which the notice was given, to furnish to him a statement in writing of the names and addresses of all other dissenting shareholders as shown in the register of members.

(6)

**No. 61, 1971**

(6) Where, in pursuance of such a scheme or contract, the transferee becomes beneficially entitled to shares in the transferor company which, together with any other shares in the transferor company to which the transferee or, where the transferee is a company, any corporation that, by virtue of subsection (5) of section six, is deemed to be related to the transferee is beneficially entitled, comprise or include nine-tenths in nominal value of the shares included in the class of shares concerned, then—

- (a) the transferee shall, within one month after the date on which he becomes beneficially entitled to those shares (unless in relation to the scheme or contract he has already complied with this requirement), give notice of the fact as prescribed to the holders of the remaining shares included in that class who, when the notice was given, had not assented to the scheme or contract or been given notice by the transferee under subsection (1) of this section; and
- (b) such a holder may, within three months after the giving of the notice to him, require the transferee to acquire his shares and, where alternative terms were offered to the approving shareholders, elect which of those terms he will accept,

and, where a shareholder gives notice under paragraph (b) of this subsection with respect to his shares, the transferee is entitled and bound to acquire those shares—

- (c) on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to him and, where alternative terms were offered to those shareholders, on the terms for which the

shareholder

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shareholder has elected, or where he has not so elected, for whichever of the terms the transferee determines; or

(d) on such other terms as are agreed or as the Court, on the application of the transferee or of the shareholder, thinks fit to order.

(7) Where a notice has been given by the transferee under subsection (1) of this section and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee shall, within fourteen days after—

- (a) the expiration of one month after the date on which the notice is given;
- (b) the expiration of fourteen days after a statement under subsection (5) of this section is supplied; or
- (c) where an application has been made to the Court by a dissenting shareholder, the application is disposed of,

whichever last happens, transmit a copy of the notice to the transferor company together with an instrument of transfer executed, on behalf of the shareholder, by a person appointed by the transferee and, on his own behalf, by the transferee, and pay, allot or transfer to the transferor company the consideration representing the price payable by the transferee for the shares that, by virtue of this section, the transferee is entitled to acquire and the transferor company shall thereupon register the transferee as the holder of those shares.

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

(9)

**No. 61, 1971**

(9) Where a sum or other property is held in trust by a company for a person under this section or under any corresponding previous provision and has been so held for not less than two years, the company shall before the expiration of ten years after the date on which the sum was paid or the consideration was allotted or transferred to the company pay the sum or transfer the consideration, and any accretions to it and any property that may become substituted for it, to the Treasurer.

(10) The Treasurer shall sell or dispose of any property other than cash transferred to him under this section or under any corresponding previous provision and any property that becomes substituted for it that he comes to hold in right of any property other than cash received under subsection (9) of this section in such manner as he thinks fit and shall deal with the proceeds of the sale or disposal and any cash so received and any dividends paid to him in respect of shares in a corporation as if they were moneys paid to him under the Unclaimed Moneys Act, 1917.

(11) Where any property other than cash transferred to the Treasurer under this section or any corresponding previous provision includes shares in a corporation, the Treasurer is not subject to any obligation—

- (a) to pay any calls;
- (b) to make any contribution to the debts and liabilities of the corporation; or

(c) to discharge any other liability, in respect of the shares, whether the obligation arises before or after the date of the transfer, and is not liable to be sued for any calls, contribution or other liability, but this subsection does not affect the right of a corporation to forfeit a share upon which a call or contribution remains unpaid or a liability undischarged. (12)

*Companies (Amendment).*

(12) Where, under the law of another No. 61, 1971 State or of a Territory of the Commonwealth that corresponds to this section, shares in a company are transferred to an authority specified in that law, that authority is not subject to any obligation as specified in subsection (11) of this section, and is not liable to be sued as so specified, in respect of those shares, but this subsection does not affect a right of the company to forfeit a share.

(13) Neither the State nor the Treasurer is liable for any loss or damage suffered by a person arising out of the exercise of any of the powers of the Treasurer under this section.

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

(k) by omitting from subsection eight of section three Sec. 354. hundred and fifty-four the words "corresponding (The branch register.) with section one hundred and eighty-five to give notice" and by inserting in lieu thereof the words "that corresponds to section 180X or section one hundred and eighty-five to give notice to a dissenting offeree or";

(l) by omitting the Tenth Schedule and by inserting in Subst. Tenth lieu thereof the following Schedule :— Schedule.

## TENTH SCHEDULE.

Sec. 180C.

## PART A.

*Requirements with which Statement Given by Offeror to Comply.*

1. The statement shall set out full particulars of the take-over offer and, if that offer and one or more other take-over offers constitute a take-over scheme, full particulars of those offers.

2.

*Companies (Amendment).*

No. 61, 1971 2. The statement shall—

- (a) where the offeror is or includes one or more corporations, specify the names, occupations and addresses of all the directors of the corporation or of each corporation;
- (b) where the offeror is or includes one or more corporations, contain a summary of the principal activities of the corporation or of each corporation;
- (c) set out full particulars of the shares in the offeree company to which the offeror is entitled or, if there are no such shares, set out a statement to that effect;
- (d) set out full particulars of marketable securities of the offeree company (not being shares referred to in paragraph (c) of this clause) to which the offeror is entitled or, if there are no such securities, set out a statement to that effect;
- (e) where the offeror is or includes one or more corporations and shares may be acquired for a consideration that is or includes shares in, or marketable securities of, that corporation or of any of those corporations, set out, in respect of that corporation or of each such corporation—
  - (i) the reports that, if the statement were a prospectus issued on the date on which the statement is given to the offeree company, would be required to be set out in a statement under paragraphs 20 and 23 of the Fifth Schedule; and
  - (ii) full particulars of any alterations in the capital structure of the corporation and of any subsidiary of the corporation during the period of five years immediately preceding the date the statement is given to the offeree company and particulars of the source of any increase in capital; and
- (f) where the offeror is or includes one or more natural persons, specify the name, address and occupation of that person or of each of those persons and set out a summary of the principal business activities of that person or of each of those persons and specify the corporations (if any) of which that person or any of those persons is a director or officer it being sufficient, where he is a director of one or more subsidiaries of the same holding company, to specify that he holds one or more directorships in a group of companies that may be described by the name of the holding company with the addition of the word "Group".

*Companies (Amendment).*

3. The statement shall set out particulars of any restriction on the right to transfer shares to which an offer under the take-over scheme relates contained in the memorandum or articles or other instrument constituting or defining the constitution of the offeree company which has the effect of requiring the holders of the shares, before transferring them, to offer them for purchase to members of the offeree company or to any other person and, if there is any such restriction, the arrangements, if any, being made to enable the shares to be transferred.

4. If the consideration for the acquisition of shares is to be satisfied in whole or in part by the payment of cash, the statement shall set out particulars of the source or sources from which that cash will be obtained.

5. The statement shall set out—

- (a) whether it is proposed in connection with the take-over scheme that any payment or other benefit shall be made or given to any director of the offeree company or of any corporation that is, by virtue of subsection (5) of section six, deemed to be related to that company as compensation for loss of office or as consideration for, or in connection with, his retirement from office and, if so, particulars of the proposed payment or benefit in respect of each such director;
- (b) whether there is any other agreement or arrangement made between the offeror, or, where the offeror is two or more persons, any of those persons, and any of the directors of the offeree company in connection with or conditional upon the outcome of the scheme and, if so, particulars of any such agreement or arrangement;
- (c) whether, within the knowledge of the offeror or, where the offeror is two or more persons, within the knowledge of any of those persons, the financial position of the offeree company has materially changed since the date of the last balance-sheet laid before the company in general meeting and, if so, full particulars of the change known to the offeror or to any of those persons; and
- (d) whether there is any agreement or arrangement whereby any shares acquired by the offeror or, where the offeror is two or more persons, by any of those persons, in pursuance of the scheme will or may be transferred to any other person and, if so—
  - (i) the names of the persons who are parties to the agreement or arrangement and the number, description and amount of the shares which will or may be so transferred and the name of the transferee; and
  - (ii)

*Companies (Amendment).***No. 61, 1971**

(ii) the number, description and amount of any shares in the offeree company held by or on behalf of each of those persons or of the transferee or, if no such shares are so held, a statement to that effect.

6. The succeeding provisions of this Part of this Schedule apply only where the consideration to be offered in exchange for shares in the offeree company consists, in whole or in part, of marketable securities issued, or to be issued, by a corporation.

7. Where marketable securities are issued or are to be issued by a corporation that is not, or is not included in the offeror, the statement shall so far as the information is available to the offeror or, where the offeror is two or more persons, is available to any of them contain the same information as would have to be given if that corporation were the offeror.

8. Where the marketable securities are listed on or dealt in on a stock exchange, the statement shall state the fact and specify the stock exchanges concerned and specify—

- (a) the latest available market sale price before the date on which the statement is given to the offeree company;
- (b) the highest and lowest market sale price during the three months immediately preceding that date and the respective dates of the relevant sales; and
- (c) where the take-over scheme has been the subject of a public announcement in newspapers or by any other means before the statement is given to the offeree company, the latest available market sale price immediately before the public announcement.

9. Where the securities are listed on or dealt in on more than one stock exchange, it is sufficient compliance with paragraphs (a) and (c) of clause 8 if information with respect to the securities is given in relation to the stock exchange at which there have been the greatest number of recorded dealings in the securities in the three months immediately preceding the date on which the statement is given to the offeree company.

10. Where the securities are not listed on or dealt in on a stock exchange, the statement shall set out all the information that the offeror, or, where the offeror is two or more persons, any of those persons, has as to the number of, amount and price at which the securities have been sold in the three months immediately preceding the date on which the statement is given to the offeree company and, if neither the offeror nor any of those persons has any such information, a statement to that effect.

*Companies (Amendment).*

11. Where marketable securities are to be issued, the information No. 61, 1971 required under clauses 8, 9 and 10 shall be given in respect of such marketable securities as have been issued and are of the same class as those to be issued.

**PART B.***Requirements with which Statement Given by Offeree Company to Comply.*

## 1. The statement shall set out—

- (a) whether the board of directors of the offeree company recommends to shareholders the acceptance of take-over offers made, or to be made, by the offeror under the take-over scheme; or
- (b) that the board of directors of the offeree company does not desire to make a recommendation or consider themselves not justified in making a recommendation.

## 2. The statement shall set out—

- (a) the number, description and amount of marketable securities of the offeree company held by or on behalf of each director of that company or, in the case of a director where none are so held, that fact;
- (b) in respect of each director of the offeree company by whom, or on whose behalf, shares in the offeree company are held—
  - (i) whether the director intends to accept any take-over offer that may be made in respect of those shares; or
  - (ii) that the director has not decided whether he will accept such a take-over offer;
- (c) where the offeror is or includes one or more corporations, whether any marketable securities of that corporation or of any of those corporations are held by, or on behalf of, any director of the offeree company and, if so, the number, description and amount of those securities;
- (d) whether it is proposed that any payment or other benefit shall be made or given to any director of the offeree company or of any corporation that is, by virtue of subsection (5) of section six, deemed to be related to that company as compensation for loss of office or as consideration for, or in connection with, his retirement from office and, if so, particulars of the proposed payment or benefit;

(e)

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- (e) whether there is any other agreement or arrangement made between any director of the offeree company and any other person in connection with or conditional upon the outcome of the take-over scheme and, if so, particulars of any such agreement or arrangement;
- (f) whether any director of the offeree company has an interest in any contract entered into by the offeror or, where the offeror is two or more persons, any of those persons and, if so, particulars of the nature and extent of each such interest;
- (g) if the shares to which the scheme relates are not listed on or dealt in on a stock exchange, all the information that the offeree company has as to the number, amount and price at which any such shares have been sold in the six months preceding the date on which the statement under paragraph (b) of subsection (1), or under paragraph (b) of subsection (3), of section 180c was given to the offeree company; and
- (h) whether the financial position of the offeree company has materially changed since the date of the last balance-sheet laid before the company in general meeting and, if so, full particulars of the change.

**Transitional provisions.**

**4.** (1) Notwithstanding the amendments made by section three of this Act, where a notice under paragraph (a) of subsection two of section one hundred and eighty-four of the Principal Act was given before the commencement of paragraph (i) of section three of this Act, the Principal Act as in force immediately before that notice was given shall apply to and in respect of the take-over scheme to which the notice relates as if this Act had not been enacted.

(2) Subject to subsection one of this section, the Principal Act, as amended by this Act, applies to and in respect of anything done after the commencement of paragraph (i) of section three of this Act under or in connection with a scheme that is a take-over scheme within the meaning of the section repealed by that paragraph, as in force immediately before that commencement, whether or not the scheme was prepared before that commencement, and whether or not anything was done in connection with the scheme before that date.

(3)

*Companies (Amendment).*

(3) Nothing in section one hundred and twenty-six ~~No. 61, 1971~~ or one hundred and twenty-seven of the Principal Act, as amended by this Act, requires a company to enter in its register kept under section one hundred and twenty-six of that Act, as so amended, or requires a director to give notice to a company of—

- (a) matters that are shown in the register kept by the company under section one hundred and twenty-six of the Principal Act, as in force immediately before the commencement of paragraph (e) of section three of this Act; or
- (b) matters referred to in subsection five of section one hundred and twenty-six of the Principal Act, as amended by this Act, that under subsection two of that section as in force immediately before the commencement of paragraph (e) of section three of this Act were not required to be shown in the register.

5. (1) In this section “prescribed expenses” in relation to a company means expenses incurred in the interest of the members of the company in relation to a take-over scheme involving the acquisition of shares in the company, being a take-over scheme to and in respect of which section one hundred and eighty-four of the Principal Act applied before its repeal.

(2) Where, before the commencement of this section, a company refunded to a director of the company an amount of prescribed expenses relating to the company, the director shall, to the extent to which the expenses would have been reasonably incurred had he been entitled to incur prescribed expenses, be deemed to have been entitled to have the expenses so refunded.

No. 61, 1971**PART III.****ACCOUNTS AND AUDIT.**

Further  
amendment  
of Act No.  
71, 1961.

Sec. 3.  
(Division  
into Parts.)

**6. (1) The Principal Act is further amended—**

(a) by omitting from section three the matter relating to Part VI and by inserting in lieu thereof the following matter :—

**PART VI.—ACCOUNTS AND AUDIT—ss. 161—167C.**

**DIVISION 1.—*Preliminary*—s. 161.**

**DIVISION 2.—*Accounts*—ss. 161A—164.**

**DIVISION 3.—*Audit*—ss. 165—167B.**

**DIVISION 4.—*Special Provisions Relating to Banking and Life Insurance Corporations*—s. 167C.**

Sec. 5.  
(Interpre-  
tation.)

“Books.”

(b) (i) by omitting from subsection one of section five the definition of “Books” and by inserting in lieu thereof the following definition :—

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

(ii) by inserting in the same subsection next after the definition of “Branch register” the following new definition :—

“Calendar  
year.”

“Calendar year” means period of twelve months commencing on the first day of January.

(iii)

*Companies (Amendment).*

(iii) by omitting from the same subsection the No. 61, 1971 definition of "Emoluments" and by inserting in lieu thereof the following definition :—

"Emoluments" includes fees, percentages and other payments made, and the money value of any consideration, allowances and perquisites given, directly or indirectly, to a director of a company in connection with the management of the affairs of the company or of any holding company or subsidiary of that company whether as a director or otherwise but does not include amounts in payment or reimbursement of out-of-pocket expenses incurred for the benefit of the company.

(iv) by inserting after the word "period" in the definition of "Profit and loss account" in the same subsection the words "and, if the corporation concerned is engaged in the development or exploration of natural resources, also includes an operations account or any like account and a development account or any like account";

(c) by omitting from subsection five of section 74F Sec. 74F. the words "subsections (4) to (13), both inclusive, of section one hundred and sixty-two and of subsections (1) (2) and (4) of section one hundred and sixty-seven" and by inserting in lieu thereof the words "section one hundred and sixty-two (other than subsections (5) and (6)) subsections (1), (2) and (3) of section 162A, section 162C, subsections (1), (2), (3), (4), (5), (6), (9) and (10) of section one hundred and sixty-seven and section 167C (other than any provision which requires the laying of accounts or group accounts within the meaning of those sections before an annual general meeting)";

(d)

**No. 61, 1971**Sec. 131.  
(Power to require disclosure of directors' emoluments.)

(d) (i) by omitting from subsection one of section one hundred and thirty-one the words "emoluments of" and by inserting in lieu thereof the words "emoluments and other benefits received by";

(ii) by omitting from the same subsection the words "emoluments paid to" and by inserting in lieu thereof the words "amount of emoluments and other benefits paid to or received by";

(iii) by omitting from the same subsection the words "to each director" and by inserting in lieu thereof the words "each director";

Sec. 136.  
(Annual general meeting.)

(e) (i) by omitting subsection two of section one hundred and thirty-six and by inserting in lieu thereof the following subsections:—

(2) The Commission may, on application made by a company in accordance with a resolution of the directors and signed by a director or secretary, subject to such conditions as the Commission thinks fit—

(a) extend the period of fifteen months or eighteen months referred to in subsection (1) of this section; or

(b) permit an annual general meeting to be held in a calendar year other than the calendar year in which it would otherwise be required by subsection (1) of this section to be held.

(2A)

*Companies (Amendment).*

(2A) A company is not in default in holding an annual general meeting under subsection (1) of this section if, in pursuance of an extension or permission under subsection (2) of this section, an annual general meeting is not held within the period or in the calendar year in which it would otherwise be required by subsection (1) of this section to be held, as the case may be but is held within the extended period or in the calendar year in which, under subsection (2) of this section, it is permitted to be held. No. 61, 1971

(2B) An application by a company for an extension of a period or for permission under subsection (2) of this section shall be made before the expiration of that period or of the calendar year in which the annual general meeting would otherwise be required by subsection (1) of this section to be held, as the case may be.

(2C) Where in a calendar year (other than the year of its incorporation or the following year) a company does not hold an annual general meeting, an annual general meeting of the company shall, for the purposes of calculating the period within which the next annual general meeting is, under subsection (1) of this section, required to be held, be deemed to have been held on the thirty-first day of December in that calendar year unless the Commission otherwise directs or on such other date in that calendar year as the Commission determines.

(ii) by inserting in subsection four of the same section after the word "meeting" where firstly occurring the words "under this section or in complying with any conditions of the Commission under subsection (2) of this section";

(f)

**No. 61, 1971****Sec. 158.**  
(Annual  
return by  
a company  
having a  
share  
capital.)

(f) (i) by omitting subsection one of section one hundred and fifty-eight and by inserting in lieu thereof the following subsection :—

(1) A company having a share capital shall, in respect of each financial year of the company, lodge with the Commission a return that—

- (a) is made up to the relevant date in respect of the financial year to which the return relates;
- (b) is in accordance with the form set out in Part II of the Eighth Schedule or as near thereto as circumstances admit;
- (c) contains such of the particulars referred to in Part I of the Eighth Schedule, and such certificates and other particulars prescribed in Part II of that Schedule, as are applicable to the company;
- (d) includes or has attached to it such documents as are required in accordance with this Act to be so included or attached; and
- (e) is signed by a director, manager or secretary of the company.

(ii) by omitting subsection two of the same section;

(iii) by omitting subsection four of the same section and by inserting in lieu thereof the following subsections :—

(4) A return under subsection (1) of this section shall be lodged with the Commission within one month or, where the company keeps

*Companies (Amendment).*

a branch register in a place that is not in a No. 61, 1971 State or a Territory of the Commonwealth, within two months—

- (a) in the case of a return made up to the date of the anniversary of the incorporation of the company, after that date; or
- (b) in any other case, after the date of the annual general meeting.

(4A) In this section “relevant date” in relation to a return in respect of a financial year of a company means—

- (a) in the case of a company that is not required by this Act to include accounts with the return and that, during the whole of that financial year, was an exempt proprietary company—the date of the anniversary of the incorporation of the company that next succeeds the end of that financial year; and
- (b) in any other case—the date determined by the company, being a date not earlier than the date of the annual general meeting before which the accounts of the company for that financial year were laid and not later than the fourteenth day after the date of that annual general meeting.

(4B) In any proceedings for failure to lodge an annual return in compliance with this section, a proprietary company shall, in the absence of proof to the contrary, be deemed to be required to lodge with the Commission a return made up to the date of the anniversary of the incorporation of the company.

(g)

**No. 61, 1971**New sec.  
159A.Auditor's  
statement.

(g) by inserting next after section one hundred and fifty-nine the following new section :—

159A. (1) A company that is not required by this Act to lodge accounts with the Commission shall include in, or attach to, its annual return under section one hundred and fifty-eight or one hundred and fifty-nine (as the case may be) a statement relating to the accounts of the company required to be laid before the company at its annual general meeting held on the date to which the return is made up or, if an annual general meeting is not held on that date, the annual general meeting last preceding that date, signed by the auditor of the company—

- (a) stating whether the company has, in his opinion, kept proper accounting records and other books during the period covered by those accounts;
- (b) stating whether the accounts have been audited in accordance with this Act; and
- (c) stating whether he referred in his report to any defect or irregularity in the accounts and, if so, giving particulars of those defects and irregularities.

(2) This section does not apply to an exempt proprietary company that is an unlimited company that, pursuant to section 165A, did not appoint an auditor to audit the accounts referred to in subsection (1) of this section.

(3) If a company fails to comply with this section the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty : Two hundred dollars. Default penalty.

(h)

*Companies (Amendment).*

(h) by omitting Part VI and by inserting in lieu thereof No. 61, 1971  
the following Part :—

Subst.  
Part VI.

**PART VI.—ACCOUNTS AND AUDIT.****DIVISION 1.—Preliminary.**

161. In this Part and the Ninth Schedule, except Interpretation.  
to the extent that the contrary intention appears—

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

“accounts” means profit and loss accounts and balance-sheets and includes notes (other than auditors’ reports or directors’ reports) attached to, or intended to be read with, any of those profit and loss accounts or balance-sheets;

“current liability” in relation to accounts or group accounts means liability which would in the ordinary course of events be payable within twelve months after the end of the financial year to which the accounts or group accounts relate;

“group accounts” in relation to a holding company means—

- (a) a set of consolidated accounts for the group of companies of that holding company;
- (b) two or more sets of consolidated accounts together covering that group;
- (c) separate accounts for each corporation in that group; or

(d)

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(d) a combination of one or more sets of consolidated accounts and one or more separate accounts together covering that group;

“group of companies” in relation to a holding company means the holding company and the corporations which are subsidiaries of the holding company;

“holding company” means corporation which is the holding company, within the meaning of section six of this Act, of another corporation;

“non-current liability” means liability that is not a current liability;

“the profit or loss” means—

- (a) in relation to a corporation that is not a holding company—the profit or loss resulting from operations of that corporation;
- (b) in relation to a corporation that is a holding company of a group of companies for which group accounts are required—the profit or loss resulting from operations of that corporation;
- (c) in relation to a corporation referred to in paragraph (b) of this definition and its subsidiaries—the profit or loss resulting from operations of the group of companies of which the corporation so referred to is the holding company; and
- (d) in relation to a corporation that is a holding company of a group of companies for which group accounts are not required—the profit or loss resulting from operations of that corporation.

DIVISION

*Companies (Amendment).*DIVISION 2.—*Accounts.*

No. 61, 1971

161A. (1) A company shall—

Accounts to  
be kept.

- (a) keep such accounting records as correctly record and explain the transactions and financial position of the company;
- (b) keep its accounting records in such a manner as will enable true and fair accounts of the company to be prepared from time to time; and
- (c) keep its accounting records in such a manner as will enable the accounts of the company to be conveniently and properly audited in accordance with this Act.

(2) Subject to section nine of the Evidence (Reproductions) Act, 1967, a company shall retain the accounting records kept under this section for a period of seven years after the completion of the transactions to which they relate.

(3) The company shall keep the accounting records at such place or places as its directors think fit.

(4) If any accounting records of a company are kept at a place outside the State the company shall keep at a place within the State determined by the directors such statements and records with respect to the matters dealt with in the records kept outside the State as will enable true and fair accounts, and any documents required by this Act to be attached to the accounts, to be prepared.

(5) The accounting records of the company and any statements and records referred to in subsection (4) of this section shall be kept in written or printed form in the English language

or

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or so as to enable the accounting records, statements and records to be readily accessible and readily convertible into written or printed form in the English language.

(6) A company shall give to the Commission notice in writing of the place in the State where any statements and records referred to in subsection (4) of this section are kept unless the statements and records are kept at the registered office of the company.

(7) The Court may, on application by a director of a company, authorise a registered company auditor acting for the director to inspect the accounting records of the company and any statements and records referred to in subsection (4) of this section.

(8) A company shall make its accounting records and any statements and records referred to in subsection (4) of this section available in written or printed form in the English language at all reasonable times for inspection without charge by the directors of the company and by other persons authorised or permitted by or under this Act to inspect the accounting records of the company.

(9) Where a registered company auditor inspects the accounting records, or the statements and records referred to in subsection (4) of this section, in pursuance of an order of the Court under subsection (7) of this section he shall not disclose to a person other than the director on whose application the order was made any information acquired by him in the course of his inspection.

Penalty: Two hundred dollars.

(10)

*Companies (Amendment).*

(10) If default is made in complying ~~No. 61, 1971~~ with a provision of this section other than subsection (9) of this section the company, any director of the company who failed to take all reasonable steps to secure compliance by the company with the provision and every officer of the company who is in default shall be guilty of an offence.

Penalty : One thousand dollars or imprisonment for six months. Default penalty : Fifty dollars.

(11) In any proceedings against a person for failure to take all reasonable steps to secure compliance by a company with a provision of this section, it is a defence to prove that he had reasonable grounds to believe, and did believe, that a competent and reliable person was charged with the duty of seeing that that provision was complied with and was in a position to discharge that duty.

161B. (1) Subject to this section, the directors ~~Financial~~ ~~years of~~ ~~grouped~~ ~~companies~~ shall take such steps as are necessary to ensure ~~companies~~ that—

- (a) within twelve months after a corporation becomes a subsidiary of the holding company the financial year of that corporation coincides with the financial year of the holding company; and
- (b) the financial year of each of its other subsidiaries coincides with the financial year of the holding company.

(2) Where the financial year of a holding company that is not a foreign company and the financial year of each of its subsidiaries coincide, the

directors

**No. 61, 1971**

directors of the holding company shall at all times take such steps as are necessary to ensure that, except with the consent of the Commission, the financial year of the holding company or any of its subsidiaries is not altered in such a way that all of those financial years no longer coincide.

(3) Where the directors of a holding company that is not a foreign company are of the opinion that there is good reason why the financial year of any of its subsidiaries should not coincide with the financial year of the holding company, they may apply in writing to the Commission for an order authorising the subsidiary to continue to have or to adopt (as the case requires) a financial year that does not coincide with that of the holding company.

(4) The application shall be supported by a statement in writing made in accordance with a resolution of the directors of the holding company and signed by not less than two directors and stating the reasons for seeking the order.

(5) The Commission may require the directors making the application to supply such information relating to the operations of the holding company, and of any related corporation, as the Commission thinks necessary for the purpose of determining the application.

(6) The Commission may request a registered company auditor to investigate and report to the Commission on the application.

(7) The costs of an investigation and report under subsection (6) of this section are payable by the holding company of which the applicants are directors.

(8)

*Companies (Amendment).*

(8) The Commission may make an order No. 61, 1971 granting or refusing the application or granting the application subject to such limitations, terms or conditions as the Commission thinks fit, and shall serve a copy of the order on the holding company.

(9) Where the applicants are aggrieved by an order made by the Commission, the applicants may, within two months after the service of the order upon the holding company, appeal against the order to the Court.

(10) The Court shall determine the appeal and, in determining the appeal, may make any order that the Commission had power to make on the original application and may exercise any of the powers that the Commission might have exercised in relation to the original application.

(11) Where the directors of a holding company have applied to the Commission for an order under this section, subsection (1) of this section shall be deemed not to apply to or in relation to the subsidiary to which the application relates until the determination of the application and of any appeal arising out of the application.

(12) Where an order is made authorising a subsidiary to have or to adopt a financial year that does not coincide with that of its holding company, compliance with the terms of the order of the Commission, or where there has been an appeal, compliance with the terms of any order made on the determination of the appeal, shall be deemed to be compliance with the provisions of subsection (1) of this section in relation to the subsidiary.

(13) Where an application for an order by the Commission under this section has been refused and there is no appeal, or where there has

been

**No. 61, 1971**

been an appeal and the appeal has been dismissed, the time within which the directors of the holding company are required to comply with the provisions of subsection (1) of this section in relation to the subsidiary shall be deemed to be the period of twelve months after the date upon which the order of the Commission is served on the holding company, or where there has been an appeal the period of twelve months after the determination of the appeal.

(14) Where the directors of a holding company have applied to the Commission for an order under this section, and the application has been refused and the appeal (if any) arising out of the refusal has been dismissed, the directors of the holding company shall not be entitled to make an application under this section with respect to the subsidiary within three years after the refusal of the first-mentioned application or, where there was an appeal, after the dismissal of the appeal, unless the Commission is satisfied that there has been a substantial change in the relevant facts or circumstances since the refusal of the former application or the determination of the appeal, as the case may be.

**Profit and loss account, balance-sheet and group accounts.**

162. (1) The directors of a company shall cause to be made out and laid before the company at each annual general meeting a profit and loss account for the period since the date to which the last preceding profit and loss account so laid was made up (or, in the case of the first profit and loss account, since the date of the incorporation of the company) made up for a period ending on a date not earlier than six months before the date of the meeting, giving a true and fair view of the profit or loss of the company for that period.

(2) Notwithstanding the provisions of subsection (1) of this section, the Commission may, on application made in accordance with a resolution of the directors, and signed on behalf of the company

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company by a director or secretary allow, subject to No. 61, 1971 such conditions as the Commission thinks fit, a profit and loss account to be made up to a date earlier than six months before the date of the annual general meeting before which it is to be laid.

(3) The directors of a company shall cause to be made out and laid before the company at each annual general meeting a balance-sheet as at the end of the financial year, giving a true and fair view of the state of affairs of the company as at the end of the financial year.

(4) Where, at the end of its financial year, a company is a holding company, the directors of the company shall, subject to subsection (5) of this section, also cause to be made out and laid before the company at its annual general meeting, group accounts dealing with—

- (a) the profit or loss of the company and its subsidiaries for their respective last financial years; and
- (b) the state of affairs of the company and its subsidiaries as at the end of their respective last financial years,

and giving a true and fair view of the profit or loss and state of affairs so far as they concern members of the holding company.

(5) Group accounts are not required to be made out and laid before a company in accordance with subsection (4) of this section where the company is, at the end of its financial year, a wholly-owned subsidiary of another corporation incorporated in any State or Territory of the Commonwealth.

(6) For the purposes of subsection (5) of this section a company is a wholly-owned subsidiary of another corporation if none of the members of the company is a person other than—

- (a) that other corporation;
- (b)

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- (b) a nominee of that other corporation;
- (c) a subsidiary of that other corporation being a subsidiary none of the members of which is a person other than that other corporation or a nominee of that other corporation; or
- (d) a nominee of such a subsidiary.

(7) The directors shall (before the profit and loss account and balance-sheet referred to in subsections (1) and (3) of this section are made out) take reasonable steps—

- (a) to ascertain what action has been taken in relation to the writing off of bad debts and the making of provisions for doubtful debts and to cause all known bad debts to be written off and adequate provision to be made for doubtful debts;
- (b) to ascertain whether any current assets (other than current assets to which paragraph (a) of this subsection applies) are unlikely to realise in the ordinary course of business their value as shown in the accounting records of the company and, if so, to cause—
  - (i) those assets to be written down to an amount which they might be expected so to realise; or
  - (ii) adequate provision to be made for the difference between the amount of the value as so shown and the amount that they might be expected so to realise; and
- (c) to ascertain whether any non-current asset is shown in the books of the company at an amount which, having regard to its value to

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to the company as a going concern, exceeds No. 61, 1971 the amount which it would have been reasonable for the company to spend to acquire that asset as at the end of the financial year and (unless adequate provision for writing down that asset is made) to cause to be included in the accounts such information and explanations as will prevent the accounts from being misleading by reason of the overstatement of the amount of that asset.

(8) Not less than fourteen days before each annual general meeting of a company the accounts of the company and, if it is a holding company for which group accounts are required, the group accounts, shall (except in the case of a company that, pursuant to section 165A or 165B, did not appoint an auditor to audit those accounts) be audited as required by this Part and the auditor's report required by section one hundred and sixty-seven shall be attached to or endorsed upon the accounts and group accounts.

(9) Without affecting the generality of the preceding provisions of this section, the accounts of a company and, if it is a holding company for which group accounts are required, the group accounts shall comply with such of the requirements of the Ninth Schedule as are applicable to them, but where accounts or group accounts prepared in accordance with those requirements would not otherwise give a true and fair view of the matters required by this section to be dealt with in the accounts or group accounts, the directors of the company shall add such information and explanations as will give a true and fair view of those matters.

(21)

(10)

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(10) There shall be attached to any accounts to be laid before a company at its annual general meeting, before the auditor reports on the accounts under this Part, a statement made in accordance with a resolution of the directors and signed by not less than two directors stating whether, in the opinion of the directors—

- (a) the profit and loss account is drawn up so as to give a true and fair view of the profit or loss of the company for the financial year; and
- (b) the balance-sheet is drawn up so as to give a true and fair view of the state of affairs of the company as at the end of the financial year.

(11) There shall be attached to group accounts of a holding company to be laid before the company at its annual general meeting, before the auditor reports on the group accounts under this Part, a statement made in accordance with a resolution of the directors of the company and signed by not less than two directors stating whether in the opinion of the directors the group accounts are drawn up so as to give a true and fair view of—

- (a) the profit or loss of the company and its subsidiaries for their respective last financial years; and
- (b) the state of affairs of the company and its subsidiaries as at the end of their respective last financial years,

so far as they concern members of the holding company.

(12)

(12) There shall be attached to any **No. 61, 1971** accounts of the company and, if it is a holding company, group accounts, to be laid before the company at its annual general meeting, before the auditor reports on the accounts or group accounts under this Part, a statement signed by the principal accounting officer of the company or other person in charge of the preparation of the company's accounts, or of the group accounts, stating whether to the best of his knowledge and belief the accounts or group accounts, as the case may be, give a true and fair view of the matters required by this section to be dealt with in the accounts or group accounts, as the case may be.

162A. (1) The directors of a company (other than a holding company for which group accounts are required) shall cause to be attached to every balance-sheet made out under subsection (3) of section one hundred and sixty-two a report made in accordance with a resolution of the directors and signed by not less than two of the directors with respect to the profit or loss of the company for the financial year and the state of the company's affairs as at the end of the financial year, stating—

- (a) the names of the directors in office at the date of the report;
- (b) the principal activities of the company in the course of the financial year and any significant change in the nature of those activities during that period;
- (c) the net amount of the profit or loss of the company for the financial year after provision for income tax;
- (d)

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- (d) the amounts and particulars of any material transfers to or from reserves or provisions during the financial year;
- (e) where, during the financial year, the company has issued any shares or debentures—the purposes of the issue, the classes of shares or debentures issued, the number of shares of each class and the amount, term and rate of debentures of each class, and the terms of issue of each class of the shares;
- (f) the amount, if any, which the directors recommend should be paid by way of dividend, and any amounts which have been paid or declared by way of dividend since the end of the previous financial year, indicating which of those amounts (if any) have been shown in a previous report under this subsection or subsection (2) of this section or under a corresponding previous enactment;
- (g) whether the directors (before the profit and loss account and balance-sheet were made out) took reasonable steps to ascertain what action had been taken in relation to the writing off of bad debts and the making of provisions for doubtful debts, and to cause all known bad debts to be written off and adequate provision to be made for doubtful debts;
- (h) whether at the date of the report the directors are aware of any circumstances which would render the amount written off for bad debts or the amount of the provision

for

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for doubtful debts inadequate to any No. 61, 1971 substantial extent (and, if so, giving particulars of the circumstances);

- (i) whether the directors (before the profit and loss account and balance-sheet were made out) took reasonable steps to ascertain whether any current assets (other than current assets to which paragraph (g) of this subsection applies) were unlikely to realise in the ordinary course of business their value as shown in the accounting records of the company and, if so, to cause—
  - (i) those assets to be written down to an amount which they might be expected so to realise; or
  - (ii) adequate provision to be made for the difference between the amount of the value as so shown and the amount that they might be expected so to realise;
- (j) whether at the date of the report the directors are aware of any circumstances which would render the values attributed to current assets in the accounts misleading (and, if so, giving particulars of the circumstances);
- (k) whether there exists at the date of the report—
  - (i) any charge on the assets of the company which has arisen since the end of the financial year and secures the liabilities of any other person

(and,

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(and, if so, giving particulars of any such charge and, so far as practicable, of the amount secured) ; and

- (ii) any contingent liability which has arisen since the end of the financial year (and, if so, stating the general nature thereof and, so far as practicable, the maximum amount, or an estimate of the maximum amount, for which the company could become liable in respect thereof) ;
- (l) whether any contingent or other liability has become enforceable, or is likely to become enforceable, within the period of twelve months after the end of the financial year which, in the opinion of the directors, will or may substantially affect the ability of the company to meet its obligations when they fall due (and, if so, giving particulars of any such liability) ;
- (m) whether at the date of the report the directors are aware of any circumstances not otherwise dealt with in the report or accounts which would render any amount stated in the accounts misleading (and, if so, giving particulars of the circumstances) ;
- (n) whether the results of the company's operations during the financial year were, in the opinion of the directors, substantially affected by any item, transaction or event

**of**

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of a material and unusual nature (and, No. 61, 1971 if so, giving particulars of that item, transaction or event and the amount or the effect thereof, if known or reasonably ascertainable) ; and

(o) whether there has arisen in the interval between the end of the financial year and the date of the report any item, transaction or event of a material and unusual nature likely, in the opinion of the directors, to affect substantially the results of the company's operations for the next succeeding financial year (and, if so, giving particulars of the item, transaction or event).

(2) The directors of a holding company shall cause to be attached to all group accounts made out under subsection (4) of section one hundred and sixty-two, a report made, in accordance with a resolution of the directors, and signed by not less than two of them with respect to the profit or loss, and the state of affairs, of the group of companies of the holding company as at the end of the financial year of the holding company, stating—

- (a) the names of the directors of the holding company in office at the date of the report;
- (b) the principal activities of the corporations in the group in the course of the financial year and any significant change in the nature of those activities during that period;
- (c) the net amount of the consolidated profit or loss of the group for the financial year after provision for income tax, showing separately

the

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the extent to which each corporation in the group contributed to that consolidated profit or loss and after deducting from that consolidated profit or loss any amounts which should properly be attributed to any person other than a corporation in the group;

- (d) the names of any subsidiaries acquired or disposed of during the financial year, the consideration for each such acquisition or disposal and the amount in each case of the net tangible assets of the subsidiary acquired or disposed of and, in the case of a subsidiary, not being a wholly-owned subsidiary, the extent of the holding company's interest therein;
- (e) the amounts and particulars of any material transfers to or from reserves or provisions of any corporation in the group during the financial year;
- (f) where, during the financial year, any corporation in the group has issued any shares or debentures—the purposes of the issue, the classes of shares or debentures issued, the number of shares of each class and the amount, term and rate of debentures of each class, and the terms of issue of each class of the shares;
- (g) the amount, if any, which the directors of the holding company recommend should be paid by way of dividend, and any amounts which have been paid or declared by way of dividend since the end of the previous financial year of the holding company, indicating which of those amounts (if any)

have

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have been shown in a previous report under No. 61, 1971 this subsection or subsection (1) of this section or under a corresponding previous enactment;

- (h) the amount, if any, of dividends paid to, or declared in favour of, the holding company by each of the subsidiaries since the end of the previous financial year and up to the date of the report except so far as any such dividends are shown in the group accounts in accordance with the Ninth Schedule;
- (i) whether, so far as debts owing to the holding company are concerned, the directors of the holding company (before the profit and loss account and balance-sheet were made out) took reasonable steps to ascertain what action had been taken in relation to the writing off of bad debts and the making of provisions for doubtful debts, and to cause all known bad debts to be written off and adequate provision to be made for doubtful debts;
- (j) whether at the date of the report the directors of the holding company are aware of any circumstances which would render the amount written off for bad debts, or the amount of the provision for doubtful debts, in the group of companies inadequate to any substantial extent (and, if so, giving particulars of the circumstances);
- (k) whether the directors of the holding company (before the profit and loss account and balance-sheet were made out) took reasonable steps to ascertain whether any

current

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current assets of the holding company (other than current assets to which paragraph (i) of this subsection applies) were unlikely to realise in the ordinary course of business their value as shown in the accounting records of the company and, if so, to cause—

(i) those assets to be written down to an amount which they might be expected so to realise; or

(ii) adequate provision to be made for the difference between the amount of the value as so shown and the amount that they might be expected so to realise;

(1) whether at the date of the report the directors of the holding company are aware of any circumstances which would render the values attributed to current assets in the group accounts misleading (and, if so, giving particulars of the circumstances);

(m) whether there exists at the date of the report—

(i) any charge on the assets of any corporation in the group which has arisen since the end of the financial year and secures the liabilities of any other person (and, if so, giving particulars of any such charge and, so far as practicable, of the amount secured); and

(ii)

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- (ii) any contingent liability of any corporation in the group which has arisen since the end of that financial year (and, if so, stating the general nature thereof and, so far as practicable, the maximum amount, or an estimate of the maximum amount, for which the corporation could become liable in respect thereof) ;
- (n) whether any contingent or other liability of any corporation in the group has become enforceable, or is likely to become enforceable within the period of twelve months after the end of the financial year, which, in the opinion of the directors of the holding company, will or may substantially affect the ability of the corporation to meet its obligations as and when they fall due (and, if so, giving particulars of any such liability) ;
- (o) whether, at the date of the report, the directors of the holding company are aware of any circumstances, not otherwise dealt with in the report or group accounts, which would render any amount stated in the group accounts misleading (and, if so, giving particulars of the circumstances) ;
- (p) whether the results of the operations of the group or of a corporation in the group during the financial year were, in the opinion of the directors of the holding company, substantially affected by any item, transaction or event of a material and unusual nature (and if so, giving particulars of that item, transaction or event and the amount or the effect thereof, if known or reasonably ascertainable) ; and
- (q)

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(q) whether there has arisen in the interval between the end of the financial year and the date of the report any item, transaction or event of a material and unusual nature likely, in the opinion of the directors of the holding company, to affect substantially the results of the operations of any corporation in the group for the next succeeding financial year (and, if so, giving particulars of the item, transaction or event).

(3) In subsections (1) and (2) of this section the expression "any item, transaction or event of a material and unusual nature" includes but is not limited to—

- (a) any change in accounting principles adopted since the last report;
- (b) any material change in the method of valuation of the whole or any part of the trading stock;
- (c) any material item appearing in the accounts or group accounts for the first time or not usually included in the accounts or group accounts; and
- (d) any absence from the accounts or group accounts of any material item usually included in the accounts or group accounts.

(4) The provisions of—

- (a) paragraphs (a), (b), (d), (i) and (m) of subsection (1) of this section; and
- (b) paragraphs (a), (b), (e), (k) and (l) of subsection (2) of this section,

do not apply to or in relation to an exempt proprietary company.

(5) Where, at the end of its financial year, a company is the subsidiary of another corporation, the directors of the company shall state

in.

*Companies (Amendment).*

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in, or in a note on or statement annexed to, the No. 61, 1971 company's accounts laid before the company at its annual general meeting, the name of the corporation that they believe to be the company's ultimate holding company and, if known to them, the country in which that holding company is incorporated.

(6) Where a company other than a holding company for which group accounts are required has at any time granted to a person an option to have issued to him shares of the company the directors shall state in the report made under this section—

- (a) in the case of an option so granted during the financial year or since the end thereof—
  - (i) the name of the person to whom the option was granted, or where it was granted generally to all the holders of shares or debentures or of a class of shares or debentures of that company or of another corporation, that the option was so granted;
  - (ii) the number and classes of shares in respect of which the option was granted;
  - (iii) the date of expiration of the option;
  - (iv) the basis upon which the option is or was to be exercised; and
  - (v) whether any person entitled to exercise the option had or has any right, by virtue of the option, to participate in any share issue of any other corporation;
- (b) particulars of shares issued, during the financial year or since the end thereof, by virtue of the exercise of any option; and

(c)

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(c) the number and classes of unissued shares under option as at the date of the report, the prices, or the method of fixing the prices, of issue of those shares, the dates of expiration of the options and particulars of the rights, if any, of the holders of the options to participate by virtue of the options in any share issue of any other corporation.

(7) Where any of the particulars required by subsection (6) of this section have been stated in a previous report, they may be stated by reference to that report.

(8) Where a company is a holding company and it or any of its subsidiaries has at any time granted to a person an option to have issued to him shares of the company or subsidiary the directors of the holding company shall state in the report made under this section the name of the corporation in respect of shares in which the option was granted and the other particulars referred to in subsection (6) of this section.

(9) The directors of a company shall state in the report whether since the end of the previous financial year a director of the company has received or become entitled to receive a benefit (other than a benefit included in the aggregate amount of emoluments received or due and receivable by directors shown in the accounts or, if the company is a holding company, the group accounts, in accordance with the Ninth Schedule, or the fixed salary of a full-time employee of the company) by reason of a contract made by the company or a related corporation with the director or with a firm of which he is a member, or with a company in which he has a substantial financial interest, and, if so, the general nature of the benefit.

(10)

*Companies (Amendment).*

(10) Every statement, report or other No. 61, 1971 document relating to the affairs of a company or any of its subsidiaries attached to or included with a report of the directors laid before the company at its annual general meeting or sent to the members under section one hundred and sixty-four (not being a statement, report or document required by this Act to be laid before the company in general meeting) shall, for the purposes of section three hundred and seventy-five, be deemed to be part of that last-mentioned report.

(11) For the purposes of this section, a corporation is a wholly-owned subsidiary of another corporation if none of the members of the corporation is a person other than—

- (a) that other corporation;
- (b) a nominee of that other corporation;
- (c) a subsidiary of that other corporation being a subsidiary none of the members of which is a person other than that other corporation or a nominee of that other corporation; or
- (d) a nominee of such a subsidiary.

162B. (1) Subject to subsection (6) of this Group section the directors of a holding company shall not to be cause to be made out the group accounts issued, &c., referred to in subsection (4) of section one hundred and sixty-two or make the report referred to in sub- accounts of subsection (2) of section 162A unless they have of subsidiaries. received from each subsidiary its audited accounts, the statements required under section one hundred and sixty-two, the directors' report in accordance with section 162A and the auditor's report in accordance with section one hundred and sixty-seven.

(2)

**No. 61, 1971**

(2) The directors of a holding company shall take reasonable steps to ensure that, when they make their report under section 162A, they will have available to them a report which has been made by the directors of each subsidiary and (if necessary) revised or added to by the directors of the subsidiary and which represents the state of affairs of the subsidiary not more than one month earlier than the date on which the report of the directors of the holding company is made.

(3) Where a subsidiary of a holding company is incorporated outside the State it is sufficient compliance with this section if the directors of the holding company receive from the subsidiary accounts and reports corresponding to those required under this section and in accordance with the law of the place of incorporation of the subsidiary.

(4) The directors of a subsidiary shall, at the request of the directors of the holding company, supply all such information as is required for the preparation of group accounts of the holding company and its subsidiaries, and of the report of the directors of the holding company.

(5) The directors of a holding company are, unless they know or have reason to suspect that any matter in any accounts, report or information furnished by the directors of a subsidiary is false or misleading, entitled to rely on the accounts, report or information for the purpose of the preparation of the group accounts and their report so far as they relate to the affairs of the subsidiary.

(6) Where the directors of a holding company, having taken all such steps as are reasonably available to them, are unable to obtain from the directors of a subsidiary any accounts, report or other information required for the preparation

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preparation of the group accounts and the directors' No. 61, 1971 report of the group, they may cause to be made out the group accounts and make the directors' report without incorporating therein or including therewith the first-mentioned accounts, report or other information relating to the subsidiary but with such qualifications and explanations as are necessary to prevent the group accounts and report from being misleading.

(7) Where the directors of a holding company have caused to be made out the group accounts and have made the directors' report in accordance with subsection (6) of this section they shall send to the shareholders of the holding company, within one month after receiving the accounts, report or other information from the directors of the subsidiary, a copy of the accounts and report or a statement embodying the other information (as the case may be) together with a statement by the directors of the holding company containing such qualifications and explanations of the group accounts and of their report as are necessary having regard to the accounts, report or information received from the subsidiary.

162c. (1) The directors of a company may apply to the Commission in writing for an order relieving them from compliance with any specified requirements of this Act relating to the form and content of accounts or group accounts or to the form and content of the report required by subsection (1) or (2) of section 162A and the Commission may make an order relieving the directors from compliance with all or any of those requirements either unconditionally or on condition that the directors comply with such other requirements relating to the form and content of the accounts or group accounts or report as the Commission thinks fit to impose.

(2)

No. 61, 1971

(2) The Commission may, where the Commission considers it appropriate, make an order in respect of a specified class of companies relieving the directors of a company in that class from compliance with any specified requirements of this Act relating to the form and content of accounts or group accounts or to the form and content of the report required by subsection (1) or (2) of section 162A and the order may be made either unconditionally or on condition that the directors of the company comply with such other requirements relating to the form and content of accounts or group accounts or report as the Commission thinks fit to impose.

(3) The Commission shall not make an order under subsection (1) or (2) of this section unless the Commission is of the opinion that compliance with the requirements of this Act would render the accounts or group accounts or report (as the case may be) misleading or inappropriate to the circumstances of the company or would impose unreasonable burdens on the company or any officer of the company.

(4) The Commission may make an order under subsection (1) or (2) of this section which may be limited to a specific period and—

- (a) in the case of an order under subsection (1) of this section may from time to time either on application by the directors or without any such application (in which case the Commission shall give to the directors an opportunity of being heard) revoke or suspend the operation of the order; or
- (b) in the case of an order under subsection (2) of this section may from time to time revoke or suspend the operation of the order.

(5)

*Companies (Amendment).*

(5) In determining any application No. 61, 1971 under subsection (1) of this section, in making an order under subsection (2) of this section, or in revoking or suspending the operation of any order made under this section the Commission shall take into account any views that the Commission knows to be held by the persons who in the other States and the Territories of the Commonwealth exercise under the corresponding laws of those States and Territories functions similar to those exercised by the Commission under this section.

(6) Notice of an order made under subsection (1) of this section and of any revocation or suspension of the operation thereof shall be served on the company concerned and the order, revocation or suspension as the case may be shall be deemed to have been made on the date on which it is so served.

(7) Notice of an order made under subsection (2) of this section and of any revocation or suspension of the operation thereof shall be published in the Gazette and the order, revocation or suspension as the case may be shall be deemed to have been made on the date on which it is so published.

(8) A person aggrieved by—

- (a) an order made under subsection (1) or (2) of this section;
- (b) the revocation or suspension of the operation of such an order; or
- (c) the refusal of an application for an order or for revocation or suspension of the operation of an order,

may, within two months after the making of the order, revocation, suspension or refusal as the case may be, appeal to the Court, and the Court may confirm, set aside or modify the order, revocation, suspension or refusal and may make such further order as it thinks just.

**No. 61, 1971****Failure to  
comply  
with this  
Division.**

163. (1) Subject to the succeeding provisions of this section, if a director of a company fails to take all reasonable steps to comply with or to secure compliance with any of the preceding provisions of this Division other than section 161A, or has by his own wilful act been the cause of any default under any of those provisions, he shall be guilty of an offence against this Act.

Penalty : One thousand dollars or imprisonment for six months.

(2) In any proceedings against a person for failure to take all reasonable steps to comply with or to secure compliance with, the preceding provisions of this Division relating to the form and content of the accounts of a company or group accounts of a holding company by reason of an omission from the accounts or group accounts, it is a defence to prove that the omission was not intentional and that the information omitted was immaterial and did not affect the giving of a true and fair view of the matters required by section one hundred and sixty-two to be dealt with in the accounts or group accounts, as the case may be.

(3) If an offence under this section is committed with intent to deceive or defraud creditors of the company or creditors of any other person or for a fraudulent purpose, the offender shall be liable to a penalty not exceeding two thousand dollars or to imprisonment for a term not exceeding one year or to both such penalty and imprisonment.

(4) A person shall not be sentenced to imprisonment for an offence under this section unless in the opinion of the court the offence was committed wilfully.

Members  
of company  
entitled to  
balance-  
sheet, &c.

164. (1) A company shall, not less than fourteen days before each annual general meeting, send a copy of all accounts and, if it is a holding company, group accounts, which are to be laid before the company at the meeting accompanied by a copy of

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of the statements required under section one No. 61, 1971 hundred and sixty-two, a copy of the directors' report required under section 162A and a copy of the auditor's report or reports required by section one hundred and sixty-seven, to all persons entitled to receive notice of general meetings of the company.

(2) Any member of a company, whether or not he is entitled to have sent to him copies of the accounts or group accounts, to whom copies have not been sent, and any holder of debentures, shall on request in writing being made by him to the company be furnished by the company as soon as practicable and without charge with a copy of the last accounts and group accounts (if any) laid or to be laid before the company at its annual general meeting, together with copies of the other documents required under subsection (1) of this section to accompany those accounts and group accounts (if any).

(3) If default is made in complying with subsection (1) or (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, unless it is proved that the person concerned had already been furnished with a copy of the accounts or group accounts and all documents referred to in subsection (1) or (2) of this section before the default was made.

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

(4) This section shall not apply to or in relation to a mutual life assurance company limited by guarantee registered under the law of the Commonwealth relating to life insurance.

DIVISION 3.—*Audit.*

165. (1) Subject to this section, a person shall Qualifica-  
not—  
tions of  
auditors.

(a) consent to be appointed as auditor of a com-  
pany ; (b)

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- (b) act as auditor of a company; or
- (c) prepare a report required by this Act to be prepared by a registered company auditor or by an auditor of a company,

if the person—

- (d) is not a registered company auditor;
- (e) is indebted in an amount exceeding one thousand dollars to the company or to a related corporation; or
- (f) except where the company is an exempt proprietary company—
  - (i) is an officer of the company;
  - (ii) is a partner, employer or employee of an officer of the company; or
  - (iii) is a partner or employee of an employee of an officer of the company.

**Penalty :** Two hundred dollars. Default penalty.

(2) A firm shall not—

- (a) consent to be appointed as auditor of a company;
- (b) act as auditor of a company; or
- (c) prepare a report required by this Act to be prepared by a registered company auditor or by an auditor of a company,

unless—

- (d) at least one member of the firm is ordinarily resident in a State or Territory of the Commonwealth;
- (e) all the members of the firm ordinarily so resident are registered company auditors;
- (f) where the business name under which the firm is carrying on business is not registered under the Business Names Act, 1962, a return in the prescribed form showing the full names and addresses of all the members of the firm has been lodged with the Commission;
- (g)

*Companies (Amendment).*


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(g) no member of the firm is indebted in an amount exceeding one thousand dollars to the company or to a related corporation;

(h) except where the company is an exempt proprietary company, no member of the firm is—

- (i) an officer of the company;
- (ii) a partner, employer or employee of an officer of the company; or
- (iii) a partner or employee of an employee of an officer of the company; and

(i) except where the company is an exempt proprietary company, no officer of the company receives any remuneration from the firm for acting as a consultant to it on accounting or auditing matters.

(3) For the purposes of subsections (1) and (2) of this section, a person shall be deemed to be an officer of a company—

- (a) if he is an officer of a related corporation; or
- (b) except where the Board, if it thinks fit in the circumstances of the case, directs otherwise, he has, at any time within the immediately preceding period of twelve months, been an officer or promoter of the company or of such a corporation.

(4) For the purposes of this section, a person shall not be deemed to be an officer of a company by reason only of his being or having been the liquidator of that company or of a related corporation.

(5) For the purposes of this section, a person shall not be deemed to be an officer of a company by reason only of his having been appointed as auditor of that company or of a related

No. 61, 1971

related corporation or, for any purpose relating to taxation, a public officer of a corporation or by reason only of his being or having been authorised to accept on behalf of the company or a related corporation service of process or any notices required to be served on the company or related corporation.

(6) The appointment of a firm as auditor of a company shall be taken to be an appointment of all persons who are members of the firm, whether resident in a State or Territory of the Commonwealth or not, at the date of the appointment.

(7) Where a firm has been appointed as auditor of a company, and the members constituting the firm change by reason of the death, retirement or withdrawal of a member or by reason of the admission of a new member, the firm as newly constituted shall, if it is not disqualified from acting as auditor of the company by virtue of subsection (2) of this section, be deemed to be appointed under section one hundred and sixty-six as auditor of the company and that appointment shall be taken to be an appointment of all persons who are members of the firm as newly constituted.

(8) A report required to be signed on behalf of a firm appointed as auditor of a company shall be signed in the firm name and in his own name by a member of the firm who is a registered company auditor.

(9) If, in contravention of this section, a firm consents to be appointed or acts as auditor of a company or prepares a report required by this Act to be prepared by a registered company auditor or by an auditor of a company, each member of the firm shall be guilty of an offence against this Act.

Penalty : Two hundred dollars.

(10)

*Companies (Amendment).*

(10) Where it is, in the opinion of the No. 61, 1971 Board, impracticable for an exempt proprietary company to obtain the services of a registered company auditor as auditor of the company in view of the place where the company carries on business, a person who is, in the opinion of the Board, suitably qualified or experienced and is approved by the Board for the purposes of this Act in relation to the audit of the company's accounts, may be appointed as auditor of the company, subject to such terms and conditions as are specified in the approval.

(11) A person appointed in accordance with subsection (10) of this section shall, in relation to the auditing of the company's accounts and, if it is a holding company for which group accounts are required, group accounts, but subject to the terms and conditions of the approval under that subsection, be deemed to be a registered company auditor and the provisions of this Act shall, with the necessary modifications, apply to and in relation to him accordingly.

(12) Where a person approved by the Board under subsection (10) of this section is acting as auditor of a company the Board may at any time by notice in writing given to the company—

- (a) amend, revoke or vary the terms and conditions of its approval; or
- (b) determine the appointment of that person as auditor of the company.

(13) A notice under subsection (12) of this section determining the appointment of a person as auditor of a company shall take effect as if, on the date on which the notice is received by the company, the company had received from the person notice of his resignation as auditor taking effect from that date.

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(14) A person shall not—

- (a) if he has been appointed auditor of a company—wilfully disqualify himself while the appointment continues from acting as auditor of the company; or
- (b) if he is a member of a firm that has been appointed auditor of a company—wilfully disqualify the firm while the appointment continues from acting as auditor of the company.

Penalty : One hundred dollars.

Unlimited  
exempt  
proprietary  
company  
need not  
appoint  
auditor in  
certain  
circum-  
stances.

165A. (1) Notwithstanding the provisions of this Part, an exempt proprietary company that is an unlimited company is not required to appoint an auditor at an annual general meeting, whether that meeting is the first annual general meeting held after the company is incorporated as, or converts to, such a company or is a subsequent annual general meeting, if—

- (a) at the date of the annual general meeting no member of the company is a person other than a natural person or an exempt proprietary company that is an unlimited company or a corporation that, under the law of another State or of a Territory of the Commonwealth, is an exempt proprietary company that is an unlimited company; and
- (b) not more than one month before the annual general meeting all the members of the company have agreed that it is not necessary for the company to appoint an auditor.

(2) The directors of an exempt proprietary company that is an unlimited company are not required to comply with subsection (1) of section one hundred and sixty-six if—

- (a) all members of the company have agreed, on a date not later than fourteen days after the

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the incorporation of the company, that it is No. 61, 1971 not necessary for the company to appoint an auditor; and

(b) between the date of the incorporation of the company and the date referred to in paragraph (a) of this subsection no member of the company is a person other than a natural person or an exempt proprietary company that is an unlimited company or a corporation that under the law of another State or a Territory of the Commonwealth is an exempt proprietary company that is an unlimited company.

(3) Where a company, by reason of the circumstances referred to in subsection (1) or (2) of this section, does not have an auditor, the secretary of the company shall record a minute to that effect in the book containing the minutes of proceedings of general meetings of the company.

(4) Where an exempt proprietary company that, pursuant to this section, does not have an auditor ceases to be an exempt proprietary company or ceases to be an unlimited company, or if a corporation other than a company or corporation referred to in paragraph (a) of subsection (1) of this section becomes a member of the company, there shall be deemed to be a vacancy in the office of auditor of the company and subsection (5) of section one hundred and sixty-six shall apply to that vacancy.

165B. (1) Notwithstanding the provisions of this Part, an exempt proprietary company that is not an unlimited company is not required to appoint an auditor at an annual general meeting, whether that meeting is the first annual general meeting held after the company is incorporated as, or becomes, such a company or is a subsequent annual general meeting,

Exempt  
proprietary  
company  
need not  
appoint  
auditor in  
certain  
circum-  
stances.

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meeting, if, not more than one month before the annual general meeting, all the members of the company have agreed that it is not necessary for the company to appoint an auditor.

(2) The directors of an exempt proprietary company that is not an unlimited company are not required to comply with subsection (1) of section one hundred and sixty-six if all the members of the company have agreed, on a date not later than fourteen days after the incorporation of the company, that it is not necessary for the company to appoint an auditor.

(3) Where a company, by reason of the circumstances referred to in subsection (1) or (2) of this section, does not have an auditor, the secretary of the company shall record a minute to that effect in the minutes of proceedings of general meetings of the company.

(4) Where an exempt proprietary company that, by reason of the circumstances referred to in subsection (1) or (2) of this section, does not have an auditor ceases to be an exempt proprietary company, there shall be deemed to be a vacancy in the office of auditor of the company and subsection (5) of section one hundred and sixty-six shall apply to that vacancy.

(5) Where, by reason of the circumstances referred to in subsection (1) or (2) of this section, accounts or group accounts of a company required to be laid before the company at its annual general meeting are not audited, there shall be included in, or attached to, the annual return of the company for the financial year to which the

accounts

*Companies (Amendment).*

accounts or group accounts relate a certificate No. 61, 1971 signed by not less than two directors of the company stating whether—

- (a) the company has, in respect of that financial year—
  - (i) kept such accounting records as correctly record and explain the transactions and financial position of the company;
  - (ii) kept its accounting records in such a manner as would enable true and fair accounts of the company to be prepared from time to time; and
  - (iii) kept its accounting records in such a manner as would enable the accounts of the company to be conveniently and properly audited in accordance with this Act; and
- (b) the accounts and group accounts (if any) have been properly prepared by a competent person.

(6) Where—

- (a) a certificate required by subsection (5) of this section to be included in, or attached to, an annual return of a company is not so included or attached;
- (b) in such a certificate, directors do not state, in respect of the financial year to which the return relates—
  - (i) that the company has kept such accounting records as correctly record

**No. 61, 1971**

record and explain the transactions and financial position of the company;

- (ii) that the company has kept its accounting records in such a manner as would enable true and fair accounts of the company to be prepared from time to time;
- (iii) that the company has kept its accounting records in such a manner as would enable the accounts of the company to be conveniently and properly audited in accordance with this Act; or
- (iv) that the accounts and group accounts (if any) of the company have been properly prepared by a competent person; or

(c) a director of a company has been convicted of an offence under subsection (2) of section three hundred and seventy-five in respect of such a certificate,

there shall be deemed to be a vacancy in the office of auditor of the company and subsection (5) of section one hundred and sixty-six shall apply to that vacancy.

**Appoint-  
ment of  
auditors.**

166. (1) Within one month after the date on which a company is incorporated, the directors of the company shall appoint (unless the company at a general meeting has appointed) a person or persons or a firm as auditor or auditors of the company.

(2)

*Companies (Amendment).*

(2) An auditor of a company appointed No. 61, 1971 under subsection (1), (5), (12) or (13) of this section shall, unless he sooner vacates his office, be deemed to have duly retired from office immediately before the annual general meeting of the company that next succeeds his appointment, but he shall be eligible for re-appointment.

(3) Subject to subsection (4) of this section, a company shall, at its annual general meeting, appoint a person or persons, or a firm, as auditor or auditors of the company.

(4) A person or persons or firm holding office as auditor or auditors of a company immediately before the conclusion of an annual general meeting of the company shall, without the passing of a resolution, be deemed to have been appointed at that meeting as auditor or auditors of the company unless the company is, by the operation of section 165A, not required to appoint an auditor at that meeting.

(5) Within one month after a vacancy (other than a vacancy caused by the retirement or removal of an auditor from office) occurs in the office of auditor of the company if there is no surviving or continuing auditor of the company, the directors shall appoint (unless the company at a general meeting has appointed) a person or persons or a firm to fill the vacancy.

(6) While a vacancy in the office of auditor continues, the surviving or continuing auditor or auditors (if any) may act.

(7)

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(7) A company or the directors of a company shall not appoint a person or firm as auditor of the company unless that person or firm has, before the appointment, consented by notice in writing given to the company or to the directors to act as auditor and has not withdrawn his or its consent by notice in writing given to the company or to the directors.

(8) A notice under subsection (7) of this section given by a firm shall be signed in the firm name and in his own name by a member of the firm who is a registered company auditor.

(9) If a company appoints a person or firm as auditor of a company in contravention of subsection (7) of this section the company and every officer of the company who is in default shall be guilty of an offence against this Act.

(10) Where an auditor of a company is removed from office at a general meeting under paragraph (a) of subsection (1) of section 166B—

- (a) the company may at that meeting (without adjournment) by a resolution passed by a majority of not less than three-fourths of such members of the company as, being entitled so to do, vote in person or, where proxies are allowed, by proxy, forthwith appoint as auditor a person or persons or a firm in respect of whom or which subsection (3) of section 166A has been complied with; or
- (b) if that subsection has not been complied with or if no such resolution is passed, the meeting may be adjourned to a date not

earlier

*Companies (Amendment).*

earlier than twenty days and not later than No. 61, 1971 thirty days after the day of the meeting and the company may, at the adjourned meeting, by ordinary resolution, appoint as auditor or auditors a person or persons or a firm, notice of whose nomination for appointment as auditor has been received by the company from a member of the company at least fourteen clear days before the date to which the meeting is adjourned.

(11) A company shall, forthwith after the removal of an auditor from office, give notice in writing to the Board of the removal.

(12) If, after the removal from office of an auditor of a company under paragraph (a) of subsection (1) of section 166B or his retirement from office, the company fails to appoint another auditor under subsection (10) of this section the company shall, within seven days after the failure, notify the Board accordingly whereupon the Board shall, unless there is another auditor of the company whom the Board believes to be able to carry out the responsibilities of auditor alone and who agrees to continue as auditor, appoint as auditor or auditors of the company a person or persons or a firm who consents or consent so to be appointed.

(13) Subject to subsection (12) of this section, if a company does not appoint an auditor when required by this Act to do so, the Board may, on the application in writing of any member of the company, appoint as auditor or auditors of the company a person or persons or a firm who consents or consent so to be appointed.

(14)

**No. 61, 1971**

(14) Subject to this Division, an auditor of a company, however appointed, holds office—

(a) until the conclusion of the annual general meeting of the company next succeeding his appointment as auditor; or

(b) until, pursuant to this Division—

(i) a resolution is passed removing him from office;

(ii) he retires or resigns; or

(iii) he otherwise vacates his office, whichever first occurs.

(15) Notwithstanding subsection (14) of this section, an auditor of a company that becomes a subsidiary of another company shall, unless he sooner vacates his office, be deemed to have duly retired from office immediately before the annual general meeting of that subsidiary next held after it becomes such a subsidiary but, subject to this Division, shall be eligible for re-appointment.

(16) If a director of a company fails to take all reasonable steps to comply with or to secure compliance with subsection (1), (5) or (7) of this section he shall be guilty of an offence against this Act and liable to a penalty not exceeding one hundred dollars and, in the case of an offence against subsection (1) or (5) of this section, to a default penalty not exceeding ten dollars.

**Nomination  
of auditors.**

166A. (1) Subject to this section, a company shall not appoint a person or firm as auditor of the company at its annual general meeting (not being a meeting at which an auditor is removed from office) unless notice in writing of his or its nomination as auditor was given to the company by a member of the company—

(a) before the meeting was called; or

(b) not less than twenty-one days before the meeting.

(2)

*Companies (Amendment).*

(2) If a company appoints a person or ~~No. 61, 1971~~ firm as auditor of the company in contravention of 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.

(3) Where notice of nomination of a person or firm for appointment as auditor of a company is received by the company (whether for appointment at a meeting or an adjourned meeting referred to in subsection (10) of section one hundred and sixty-six or at an annual general meeting) the company shall—

(a) not less than seven days before the meeting; or

(b) at the time notice of the meeting is given, send a copy of the notice of nomination to each person or firm nominated, to each auditor of the company and to each person entitled to receive notice of general meetings of the company.

166B. (1) The auditor or auditors of a company may not be removed from office except— Removal, retirement and resignation of auditors.

(a) by a resolution of the company at an annual or other general meeting; or

(b) by a resolution of the company, at an annual general meeting, appointing a person or persons, or a firm, as auditor or auditors in his or their place,

being a resolution of which special notice has been given.

(2) Where special notice of a resolution to remove an auditor is received by a company, it shall forthwith send a copy of the notice to the auditor and to the Board.

(3)

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(3) Within seven days after receiving a copy of the notice, the auditor may make representations in writing to the company (not exceeding a reasonable length) and request that, before the meeting at which the resolution is to be considered, a copy of the representations be sent by the company at its expense to every member of the company to whom notice of the meeting is sent.

(4) Unless the Board on the application of the company otherwise orders, the company shall send a copy of the representations in accordance with the auditor's request, and the auditor may (without prejudice to his right to be heard orally or where a firm is the auditor to have a member of the firm heard orally on its behalf) require that the representations be read out at the meeting.

(5) An auditor of a company may, by notice in writing given to the company, retire from, or resign, his office as auditor of the company if—

(a) he has, by notice in writing given to the Board, applied for consent to his retirement or resignation and stated the reasons therefor and, at or about the same time as he gave the notice to the Board, notified the company in writing of his application to the Board; and

(b) he has received the consent of the Board.

(6) The Board shall, as soon as practicable after receiving a notice from an auditor under subsection (5) of this section, notify the auditor and the company whether it consents to the retirement or resignation of the auditor.

(7)

*Companies (Amendment).*

(7) A statement made by an auditor in No. 61, 1971 an application to the Board under subsection (5) of this section or in answer to an inquiry by the Board relating to the reasons for the application—

- (a) is not admissible in evidence in any civil or criminal proceedings against the auditor; and
- (b) may not be made the ground of a prosecution, action or suit against the auditor,

and a certificate signed by the chairman of the Board that the statement was made in the application or in the answer to the inquiry by the Board shall be conclusive evidence that the statement was so made.

(8) A person aggrieved by the refusal of consent by the Board to the retirement or resignation of an auditor of a company may, within one month after the date of the refusal, appeal to the Court from the refusal, and thereupon the Court (after hearing the company if the company so desires) may confirm or reverse the refusal and may make such further order in the matter as to it seems proper.

(9) Subject to any order of the Court under subsection (8) of this section—

- (a) the retirement of an auditor of a company takes effect immediately before the annual general meeting of the company next succeeding receipt by the company of the notice effecting the retirement; and
- (b) subject to subsection (10) of this section, the resignation of an auditor takes effect—
  - (i) on the date (if any) specified for the purpose in the notice of resignation;
  - (ii)

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(ii) on the date on which the Board gives its consent to the resignation; or

(iii) on the date (if any) fixed by the Board for the purpose,

whichever last occurs.

(10) The retirement or resignation of an auditor of an exempt proprietary company does not require the consent of the Board under subsection (5) of this section and takes effect—

(a) in the case of a retirement—immediately before the annual general meeting of the company next succeeding receipt by the company of the notice effecting the retirement;

(b) in the case of a resignation—

(i) on the date (if any) specified for the purpose in the notice of resignation; or

(ii) on the date on which the notice is received by the company,

whichever is the later.

(11) Where on the retirement or withdrawal from a firm of a member the firm will no longer be capable, by reason of the provisions of paragraph (d) of subsection (2) of section one hundred and sixty-five of acting as auditor of a company, the member so retiring or withdrawing shall (if not disqualified from acting as auditor of the company) be deemed to be the auditor of the company until he obtains the consent of the Board to his retirement or withdrawal.

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(12) Within fourteen days after the No. 61, 1971 receipt of a notice of retirement or resignation of an auditor of a company or, where an auditor of a company is removed from office, within fourteen days after the removal the company shall lodge a notice of the retirement, resignation or removal in the prescribed form with the Commission, and in the case of the retirement, resignation or removal from office of an auditor of a borrowing corporation, give a copy of the notice lodged with the Commission to the trustee for the holders of debentures of the borrowing corporation.

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

166C. The reasonable fees and expenses of an ~~Fees and expenses of~~ auditor of a company shall be payable by the ~~auditors~~ company.

167. (1) An auditor of a company shall ~~Powers and duties of auditors as to reports on accounts.~~ report to the members on the accounts required to be laid before the company in general meeting and on the company's accounting records and other records relating to those accounts and, if it is a holding company for which group accounts are required, shall also report to the members on the group accounts.

(2) An auditor shall, in a report under this section, state—

(a) whether the accounts and, if the company is a holding company for which group accounts are required, the group accounts are in his opinion properly drawn up—

(i) so as to give a true and fair view of the matters required by section one hundred and sixty-two (or, in the

case

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case of a prescribed corporation within the meaning of section 167C, by this Part) to be dealt with in the accounts and, if there are group accounts, in the group accounts; and

(ii) in accordance with the provisions of this Act;

(b) whether the accounting records and other records, and the registers, required by this Act to be kept by the company and, if it is a holding company, by the subsidiaries other than those of which he has not acted as auditor have been, in his opinion, properly kept in accordance with the provisions of this Act or, in the case of a subsidiary incorporated in another State or in a Territory of the Commonwealth, in accordance with the provisions of the corresponding law of that State or Territory;

(c) in the case of group accounts—

(i) the names of the subsidiaries (if any) of which he has not acted as auditor;

(ii) whether he has examined the accounts and auditors' reports of all subsidiaries of which he has not acted as auditor, being accounts that are included (whether separately or consolidated with other accounts) in the group accounts;

(iii) whether he is satisfied that the accounts of the subsidiaries that are to be consolidated with other

accounts

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accounts are in form and content **No. 61, 1971** appropriate and proper for the purposes of the preparation of the consolidated accounts, and whether he has received satisfactory information and explanations as required by him for that purpose; and

- (iv) whether the auditor's report on the accounts of any subsidiary was made subject to any qualification, or included any comment made under subsection (3) of this section, and, if so, particulars of the qualification or comment;
- (d) any defect or irregularity in the accounts or group accounts and any matter, not set out in the accounts or group accounts, without regard to which a true and fair view of the matters dealt with by the accounts or group accounts would not be obtained; and
- (e) if he is not satisfied as to any matter referred to in paragraph (a), (b) or (c) of this subsection, his reasons for not being so satisfied.

(3) It is the duty of an auditor of a company to form an opinion as to each of the following matters—

- (a) whether he has obtained all the information and explanations that he required;
- (b) whether proper accounting records and other records (including registers) have been kept by the company as required by this Act;

(c)

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- (c) whether the returns received from branch offices of the company are adequate;
- (d) whether the procedures and methods used by a holding company or a subsidiary in arriving at the amounts taken into any consolidated accounts were appropriate to the circumstances of the consolidation; and
- (e) where group accounts are prepared otherwise than as one set of consolidated accounts for the group—whether he agrees with the reasons for preparing them in the form in which they are prepared, as given by the directors in the accounts,

and he shall state in his report particulars of any deficiency, failure or short-coming in respect of any matter referred to in this subsection.

(4) An auditor of a company has a right of access at all reasonable times to the accounting records and other records (including registers) of the company, and is entitled to require from any officer of the company such information and explanations as he desires for the purposes of audit.

(5) An auditor of a holding company for which group accounts are required has a right of access at all reasonable times to the accounting records and other records (including registers) of any subsidiary, and is entitled to require from any officer or auditor of any subsidiary, at the expense of the company, such information and explanations in relation to the affairs of the subsidiary as he requires for the purpose of reporting on the group accounts.

(6) The auditor's report shall be attached to or endorsed on the accounts or group accounts and shall, if any member so requires, be read

before

*Companies (Amendment).*

before the company in general meeting, and is open No. 61, 1971 to inspection by any member at any reasonable time after the commencement of the meeting.

(7) An auditor of a company or his agent authorised by him in writing for the purpose is entitled to attend any general meeting of the company and to receive all notices of, and other communications relating to, any general meeting which a member is entitled to receive, and to be heard at any general meeting which he attends on any part of the business of the meeting which concerns the auditor in his capacity as auditor and is entitled so to attend, receive notices and communications and be heard notwithstanding that—

- (a) he has retired as auditor and his retirement is to take effect, or has taken effect, immediately before the meeting; or
- (b) a resolution to remove him from office is passed at the meeting.

(8) If an auditor of a company becomes aware that the company or the directors have made default in complying with the provisions of section one hundred and thirty-six or subsection (1), (3) or (4) of section one hundred and sixty-two relating to the laying of accounts or group accounts before the annual general meeting of the company, the auditor shall immediately inform the Commission by notice in writing and, if accounts or group accounts have been prepared and audited, forward to the Commission a copy of the accounts or group accounts, and of his report thereon.

(9)

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—

(9) Except in a case to which subsection (8) of this section applies, if an auditor, in the course of the performance of his duties as auditor of a company, is satisfied that—

- (a) there has been a breach or non-observance of any of the provisions of this Act; and
- (b) the circumstances are such that in his opinion the matter has not been or will not be adequately dealt with by comment in his report on the accounts or group accounts or by bringing the matter to the notice of the directors of the company or, if the company is a subsidiary, of the directors of its holding company,

he shall forthwith report the matter in writing to the Commission.

(10) An officer or auditor of a corporation who refuses or fails without lawful excuse to allow an auditor of the corporation or of its holding company access, in accordance with this section, to any accounting records and other records (including registers) of the corporation in his custody or control, or to give any information or explanation as and when required under this section, or otherwise hinders, obstructs or delays an auditor in the performance of his duties or the exercise of his powers, is guilty of an offence against this Act.

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

Special  
provisions  
relating to  
borrowing  
and  
guarantor  
corporations.

167A. (1) The auditor of a borrowing corporation shall, within seven days after furnishing the corporation or its members with any report, certificate or other document that he is required by this

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this Act or by the debentures or trust deed to give No. 61, 1971 to the corporation or its members, send to every trustee for the holders of debentures of the borrowing corporation a copy of the report, certificate or document, together with a copy of each document accompanying the report, certificate or document so furnished.

(2) Where, in the course of the performance of his duties as auditor of a borrowing corporation or a guarantor corporation, the auditor becomes aware of any matter which, in his opinion, is or is likely to be prejudicial to the interests of the holders of debentures of the borrowing corporation and is relevant to the exercise and performance of the powers and duties imposed by this Act or by any trust deed upon any trustee for the holders of the debentures, the auditor shall, within seven days after becoming aware of the matter, send a report in writing on the matter to the corporation of which he is auditor and a copy of the report to the trustee.

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

167B. (1) An auditor has qualified privilege in respect of any defamatory matter published by him—

- (a) in so far as the defamatory matter is so published in the course of, and relates to, the exercise or performance by the auditor of his functions or duties under this Act; and
- (b) in so far as the defamatory matter is so published in representations made by the auditor under subsection (3) of section 166B and relates to the exercise or performance by the auditor of his functions or duties under this Act.

(2)

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(2) Subsection (1) of this section does not operate to prejudice or affect any qualified privilege—

- (a) that an auditor has in respect of defamatory matter published by him where it is defamatory matter not referred to in that subsection or is published in circumstances not so referred to; or
- (b) that any other person has in respect of defamatory matter published by him, whether or not it is defamatory matter referred to in that subsection.

**DIVISION 4.—*Special Provisions Relating to Banking and Life Insurance Corporations.***

Application of Part to certain corporations.

**167C.** (1) In this section “prescribed corporation” means—

- (a) a banking corporation; or
- (b) a corporation that is registered under a law of the Commonwealth relating to life insurance.

(2) Subject to this section, this Part applies to and in relation to a prescribed corporation that is a company or is a corporation that is a subsidiary of the holding company of a group of companies.

(3) Where, under a law of the Commonwealth relating to banking, a prescribed corporation is required to prepare accounts annually, accounts of the corporation that comply with the provisions of that law shall be deemed to comply with the provisions of this Act relating to accounts.

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(4) Subsection (1) of section 162A does No. 61, 1971 not apply to or in relation to a prescribed corporation or its directors.

(5) Where, under a law of the Commonwealth relating to life insurance, a prescribed corporation is required to prepare accounts annually, the prescribed corporation and the directors and auditors thereof shall not be deemed to have failed to comply with such of the provisions of this Part as are applicable to it or them by reason only that no accounts are laid before the annual general meeting of the corporation other than accounts that—

- (a) comply with the provisions of that law; or
- (b) comply with such conditions as are specified by the Commission,

and that there is no auditor's report to the members on accounts referred to in paragraph (b) of this subsection.

(6) Subsection (2) of section one hundred and sixty-seven does not apply to or in relation to the accounts of a prescribed corporation that is registered under a law of the Commonwealth relating to life insurance where those accounts comply with that law.

(7) Where a company is a holding company of another corporation and is, under section one hundred and sixty-two, required to cause group accounts to be made out, the company and the directors and auditors of the company—

- (a) shall not be deemed to have failed to comply with the provisions of this Act relating to group accounts by reason only that the group accounts do not contain, whether separately or consolidated with other accounts,

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accounts, accounts of a prescribed corporation that is a corporation in the group of companies other than accounts that—

- (i) comply with a law of the Commonwealth relating to the preparation of annual accounts of the prescribed corporation; or
- (ii) in the case of a prescribed corporation that is registered under a law of the Commonwealth relating to life insurance, comply with such conditions as are specified by the Commission;
- (b) shall not be deemed to have failed to comply with the provisions of subsection (2) of section 162A by reason only that the directors' report referred to therein relates only to corporations in the group of companies other than prescribed corporations; and
- (c) shall not be deemed to have failed to comply with the provisions of subsection (8) of section one hundred and sixty-two or of section one hundred and sixty-seven by reason only that those provisions are not complied with in relation to prescribed corporations in the group of companies that are registered under a law of the Commonwealth relating to life insurance.

(8) A prescribed corporation shall not be deemed to have failed to comply with section one hundred and sixty-four in relation to an annual general meeting by reason only that it does not send to a person entitled to receive notice of general meetings of the company accounts or documents referred to in that section other than accounts and

documents

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documents so referred to that, in compliance with No. 61, 1971 the provisions of this Part, whether by the operation of this section or otherwise, are to be laid before that annual general meeting.

(9) Where a prescribed corporation registered under a law of the Commonwealth relating to life insurance does not lay before its annual general meeting accounts and an auditor's report that comply with the provisions of that law, it shall lodge a copy of those accounts and a copy of that report with the Commission on or before a day that is not later than nine months after the end of the period to which they relate.

- (i) by omitting from paragraph (a) of subsection one of section three hundred and forty-one the words "paragraph (h) of subclause (1) of clause 2" and by inserting in lieu thereof the words "paragraphs (d), (e) and (f) of subclause (4) of clause 5";
- (j) (i) by omitting from subsection two of section three hundred and seventy-five the words ", certificate, balance-sheet or other" and by inserting in lieu thereof the words "or certificate or in accounts or in any other";
- (ii) by omitting from the same subsection the words "a statement false in any material particular knowing it to be false" and by inserting in lieu thereof the words "or authorises the making of a statement which is false or misleading in a material particular knowing it so to be false or misleading or wilfully omits or authorises the omission of any matter or thing without which the document is misleading in a material respect and is known by him to be misleading";
- (iii) by omitting from paragraph (a) of the same subsection the word "one" and by inserting in lieu thereof the word "five";

(iv)

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(iv) by omitting from paragraph (b) of the same subsection the words "four hundred" and by inserting in lieu thereof the words "one thousand";

(v) by inserting next after the same subsection the following new subsection:—

(3) For the purposes of subsection (2) of this section, where a person at a meeting votes in favour of the making of a statement referred to in that subsection, he shall be deemed to have authorised the making of the statement.

**New sec.  
375A.**

(k) by inserting next after section three hundred and seventy-five the following new section:—

**False  
reports.**

375A. An officer of a corporation who, with intent to deceive, makes or furnishes, or knowingly and wilfully authorises or permits the making or furnishing of, any false or misleading statement or report to—

(a) a director, auditor, member, debenture holder or trustee for debenture holders of the corporation;

(b) in the case of a corporation that is a subsidiary, an auditor of the holding company; or

(c) a prescribed stock exchange in Australia or elsewhere, or an officer thereof,

relating to the affairs of the corporation is guilty of an offence against this Act.

Penalty: On conviction upon indictment, five thousand dollars or imprisonment for two years, or both; on summary conviction, one thousand dollars or imprisonment for six months or both.

**Second  
Schedule.**

(l) (i) by omitting from item 29A of the Second Schedule the letter "A" and by inserting in lieu thereof the letter "B";

(ii)

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(ii) by omitting from item 29B of the same No. 61, 1971 Schedule the letter "A" and by inserting in lieu thereof the letter "B";

(iii) by inserting next after item 29B of the same Schedule the following new item :—

29C. For lodging an application under section 162C .. .. 25

(m) (i) by inserting next after paragraph 2 of Part Eighth I of the Eighth Schedule the following new Schedule. paragraph :—

2A. A list of the business names under which the company carries on business.

(ii) by omitting from paragraph 4 of the same Part the words "in respect of all charges which are required to be registered with the Commission" and by inserting in lieu thereof the words "secured on the property (whether real or personal) or undertaking of the company";

(iii) by inserting at the end of the same Part the following new paragraph :—

11. A statement whether the company has complied with the requirements of this Act relating to the laying of accounts before the company at its annual general meeting held on the date to which the return is made up or, if an annual general meeting is not held on that date, the annual general meeting last preceding that date.

(iv)

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(iv) by omitting from Part II of the same Schedule the words “[being the date of or a date not later than the fourteenth day after the date of the Annual General Meeting in 19]” and by inserting in lieu thereof the following matter :—

being—

(a) in the case of a company that during the whole of the last financial year of the company was an exempt proprietary company, being a company that is not required to include accounts with this return—the date of the anniversary of the incorporation of the company that next succeeds the end of that financial year; or

(b) in any other case—the date determined by the company, being a date not earlier than the date of the Annual General Meeting before which the accounts of the company for the last financial year of the company were laid and not later than the fourteenth day after the date of that Annual General Meeting.

The last financial year of the company ended on ..... 19 .

(v) by omitting from Part II of the same Schedule the words “The date of the Annual General Meeting of the company was 19”. and by inserting in lieu thereof the following matter :

The

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The accounts of the company <sup>\*were</sup> <sub>\*were not</sub> No. 61, 1971

laid before the Annual General Meeting of the company held on 19 , being

*\*the date of this return.*

*\*the date of the Annual General Meeting last held before the date of this return.*

- (vi) by inserting in Part II of the same Schedule after the words "The address of the place at which the register of members is kept if other than the registered office is" the words "The business names under which the company carries on business are";
- (vii) by inserting in Part II of the same Schedule next before the heading "*Summary of Share Capital and Shares.*" the following matter :—  
\* Strike out whichever is inapplicable.
- (viii) by omitting from Part II of the same Schedule the words "in respect of all charges which are required to be registered with the Commission" and by inserting in lieu thereof the words "secured on the property (whether real or personal) or undertaking of the company";
- (ix) by omitting footnote <sup>5</sup> to the matter under the heading "*Summary of Share Capital and Shares.*" in Part II of the same Schedule and by inserting in lieu thereof the following footnote :—  
5 State the total amount of indebtedness and show, in respect of any charge registered with the Commission, the registered number thereof, the date of registration and the amount of indebtedness at the date of the return.
- (x) by omitting from Part II of the same Schedule the heading "*Copy of last audited Balance-sheet and Profit and Loss Account of the Company.*" and the words that follow that heading and

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and precede the heading "*Certificate to be given by all companies.*" and by inserting in lieu thereof the following matter :—

*Copy of Last Accounts of the Company.*

Except in the case of—

- (a) a company that, during the whole of the financial year to which the return relates, was an exempt proprietary company and an unlimited company;
- (b) a company that, during the whole of the financial year to which the return relates was an exempt proprietary company, being a company of which the accounts and group accounts (if any) for that financial year were audited in accordance with the Companies Act, 1961,

the return must include a copy, certified by a director, or by the manager or secretary, of the company to be a true copy, of all accounts and group accounts (if any) laid before the company at the Annual General Meeting together with a copy of every document required by law to be attached or annexed thereto.

- (xi) by omitting paragraph (e) from the matter appearing under the heading "*Certificate.*" in Part II of the same Schedule and by inserting in lieu thereof the following paragraph :—

(e)<sup>(5)</sup> that to the best of our knowledge and belief the company was an exempt proprietary company within the meaning of section 5 of the Companies Act, 1961, during the whole of the financial year to which the return relates.

(xi)

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(xii) by omitting paragraph (f) of the same matter No. 61, 1971 and by inserting in lieu thereof the following paragraphs :—

(f) <sup>(7)</sup> that at the Annual General Meeting held on 19 the company pursuant to section 165A of the Companies Act, 1961, did not appoint an auditor.

(g) <sup>(8)</sup> that at the Annual General Meeting held on 19 the company, pursuant to section 165B of the Companies Act, 1961, did not appoint an auditor.

(xiii) by omitting from the same matter the word “Director.<sup>(8)</sup>” and by inserting in lieu thereof the word “Director.<sup>(9)</sup>”;

(xiv) by omitting from Part II of the same Schedule the following matter :—  
<sup>(6)</sup> Strike out if not appropriate.

(xv) by inserting in footnote <sup>(7)</sup> to the same matter after the word “company” the words “that is an unlimited company no member of which was, at the date of the Annual General Meeting, a person other than a natural person, or an exempt proprietary company that is an unlimited company, or a corporation that, under the law of another State or of a Territory of the Commonwealth is an exempt proprietary company that is an unlimited company, where all the members agreed not more than one month before that meeting not to appoint an auditor”;

(xvi) by omitting footnote <sup>(8)</sup> to the same matter and by inserting in lieu thereof the following footnotes :—  
<sup>(8)</sup> Strike out this paragraph if inapplicable. Note, this paragraph is only applicable to an exempt proprietary company that is not an unlimited

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unlimited company all the members of which agreed not more than one month before the Annual General Meeting not to appoint an auditor.

<sup>(9)</sup> NOTE.—A certificate signed by the same person in the capacity of both director and secretary will not be accepted. See section 132 (5) of the Companies Act, 1961.

**Subst.  
Ninth  
Schedule.**

**Secs.  
162, 341.**

(n) by omitting the Ninth Schedule and by inserting in lieu thereof the following Schedule :—

**NINTH SCHEDULE.**

**ACCOUNTS AND GROUP ACCOUNTS.**

1. (1) In this Schedule—

- (a) “reserve” does not include any amount written off or retained by way of providing for depreciation, renewal or diminution in value of assets or retained by way of providing for any known liability, or any amount set aside for the purpose of its being used to counter the effect of undue fluctuations in charges for taxation.
- (b) a reference to a financial year in relation to group accounts of a holding company is—where the financial year of any one or more of the companies in the group of companies does not end on the date on which the financial year of the holding company ends—a reference to the financial year of the holding company and the financial year of each other company in the group of companies that does not end on that date.

(2) The term “reserve” shall not be included in any accounts or group accounts to describe any amount which is excluded by the provisions of subclause (1) of this clause from the meaning of that term for the purposes of this Schedule.

2. (1) There shall be shown separately in the accounts or group accounts (whether by way of note or otherwise), in addition to any other matters necessary to present a true and fair view of the profit or loss of the company, or of the company and its subsidiaries—

- (a) the amounts of income received, or due and receivable, as dividends declared on shares in—
  - (i) related corporations; and
  - (ii) other corporations,
separate amounts being shown in respect of each related corporation:

*Companies (Amendment).***NINTH SCHEDULE—continued.****No. 61, 1971**

- (b) the amounts of income received, or due and receivable, as interest on debentures, deposits, loans or advances, from—
  - (i) the holding company;
  - (ii) subsidiaries; and
  - (iii) other related corporations;
- (c) the amount of—
  - (i) any profit arising from the sale of assets (other than current assets); and
  - (ii) any profit arising from the re-valuation of assets (other than current assets)—
 

and, in respect of each such profit, a statement whether it has been brought into account in determining the net amount of the profit or loss of the company or the company and its subsidiaries;
- (d) the amount of any other profit arising otherwise than in the ordinary course of business;
- (e) the amounts of interest paid, or due and payable, on debentures, deposits, loans or advances or otherwise to—
  - (i) the holding company;
  - (ii) subsidiaries;
  - (iii) other related corporations; and
  - (iv) other persons;
- (f) the amount of—
  - (i) any loss arising from the sale of assets (other than current assets); and
  - (ii) any loss arising from the re-valuation of assets (other than current assets)—
 

and, in respect of each such loss, a statement whether it has been brought into account in determining the net amount of the profit or loss of the company or of the company and its subsidiaries.
- (g) the amount of any other loss arising otherwise than in the ordinary course of business;
- (h) the amount charged for, or set aside to a provision for, depreciation, diminution in value or amortisation of—
  - (i) fixed assets;
  - (ii) investments; and
  - (iii) intangible assets;
- (i) the amount charged for, or set aside for, the renewal or replacement of fixed assets;

**NINTH**

**No. 61, 1971****NINTH SCHEDULE—continued.**

- (j) in respect of each class of debtors' accounts shown separately in the accounts or group accounts—
  - (i) the amount of bad debts written off in the profit and loss account; and
  - (ii) the amount of bad debts written off against any provision, reserve or other account, stating the name of the provision, reserve or account and the amount written off against it;
- (k) in respect of each class of debtors' accounts shown separately in the accounts or group accounts, the amount set aside to any provision for doubtful debts;
- (l) separately, the total of the emoluments received, or due and receivable (whether from the company or from a related corporation) by—
  - (i) directors of the company engaged in the full-time employment of the company and its related corporations (including all bonuses and commissions received or receivable by them as employees but not including the amount received or receivable by them by way of fixed salary as employees); and
  - (ii) other directors of the company, including, in each case, commissions for subscribing for or agreeing to procure subscriptions for, any shares in or debentures of the company or any related corporation, and the portion, if any, of the total amount contributed or to be contributed otherwise than by the company;
- (m) the amounts (including benefits in kind) received, or due and receivable, by the auditors for their services to the company, separate amounts being shown in respect of—
  - (i) the auditing of the accounts or group accounts; and
  - (ii) other services, and the portion of each such amount contributed or to be contributed otherwise than by the company with a statement whether the auditors receive any other benefits, and, if so, the general nature thereof.

(2) There shall also be shown in the accounts or group accounts in respect of the financial year (whether by way of note or otherwise) the amount set aside for the payment of income tax attributable to the financial year.

**NINTH**

**NINTH SCHEDULE—continued.****No. 61, 1971**

3. There shall be shown in the accounts or group accounts in respect of the financial year (whether by way of note or otherwise), separately—

- (a) the amount of unappropriated profits or accumulated losses (however described) at the beginning of the financial year;
- (b) the net amount of profit or loss after providing for payment of income tax attributable to the financial year;
- (c) any amount set aside to any provision for the payment of income tax attributable to a period other than the financial year;
- (d) any amount set aside or proposed to be set aside to any reserve stating the origin of that amount;
- (e) any amount withdrawn, or proposed to be withdrawn, from any reserve;
- (f) any amount set aside to a provision (other than a provision specifically provided for in this Schedule);
- (g) any amount withdrawn from any provision where the amount withdrawn was not applied for the purposes of the provision;
- (h) any amount set aside for redemption of share capital or of loans;
- (i) the amount of dividends paid during the financial year and the amount of dividends proposed to be paid, excluding any amount shown in a profit and loss account or balance-sheet relating to a previous financial year as an amount proposed to be paid by way of dividends;
- (j) the amount of any appropriation or adjustment which affects the amount of unappropriated profits or accumulated losses at the end of the financial year; and
- (k) the amount of unappropriated profits or accumulated losses (however described) at the end of the financial year.

4. Where in accounts of a company or in group accounts of a company the amount set aside for the payment of income tax attributable to the financial year differs, or but for compensatory items would differ, by more than fifteen per centum from the amount of income tax that would be payable by the company or by the company and its subsidiaries if its taxable income for that year were equal to the amount shown in or ascertainable from the accounts or group accounts as being the amount of the net profit or loss before provision is made for the payment of income tax attributable to that year, there shall be set out an explanation of the difference, including a statement of the major items responsible for the difference and the amount, or estimated amount, of those items.

**NINTH**

**No. 61, 1971****NINTH SCHEDULE—continued.**

5. (1) There shall be shown separately in the accounts or group accounts as at the end of the financial year (whether by way of note or otherwise)—

- (a) the amount and particulars of authorised capital, calls in arrear and paid-up capital, a distinction being drawn in those amounts and particulars between any different classes of shares;
- (b) where any part of the capital consists of preference shares—
  - (i) the rate of dividend on each class of preference shares;
  - (ii) the amount of arrears of dividend on each class of preference shares;
  - (iii) whether the preference shares are cumulative, non-cumulative, participating or non-participating;
  - (iv) whether the preference shares are to be redeemed or at the option of the company are liable to be redeemed; and
  - (v) if the preference shares are to be redeemed or at the option of the company are liable to be redeemed—the date on or before which they are to be redeemed or are liable to be redeemed, the earliest date on which the company has power to redeem them, and the amount of the premium (if any) at which they are to be redeemed or are liable to be redeemed;
- (c) the amount of capital which is not capable of being called up except in the event of, and for the purposes of, the winding up of the company;
- (d) the amount of capital upon which interest has been paid out of capital during the financial year (and the rate of interest so paid);
- (e) where the company is a no-liability company—
  - (i) the number of shares forfeited and remaining unsold; and
  - (ii) the number of shares forfeited during the financial year, showing the number of shares forfeited in respect of each call and the amount of each such call;
- (f) the amount of reserves of all descriptions, a separate amount being shown for each class;
- (g) the amount of the share premium account;

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*Companies (Amendment).***NINTH SCHEDULE—continued.****No. 61, 1971**

- (h) the amount of unappropriated profits or accumulated losses (if any) as shown under paragraph (k) of clause 3 of this Schedule, any accumulated losses (insofar as they have not been written off) being shown as a deduction from the amount of paid-up capital and reserves;
- (i) the amount and particulars of provisions, there being shown separately—
  - (i) the amount of any provision for depreciation, diminution in value or amortisation of assets shown as deductions from the amounts of the respective assets;
  - (ii) the amount of any provision for doubtful debts shown as deductions from the amounts of the respective debtors' accounts to which the provision relates;
  - (iii) the amount of provision for income tax, a distinction being drawn between the amount provided for current liability and that provided for future liability, and any amount provided for the purpose of its being used to counter the effect of undue fluctuations in liability for income tax being shown separately; and
  - (iv) the amount and purpose of any other provision shown, if appropriate, as a deduction from the amount of the asset to which the provision relates.

(2) There shall be shown in the accounts or group accounts as at the end of the financial year (whether by way of note or otherwise) the amounts and descriptions of all current liabilities and non-current liabilities, under headings appropriate to the business of the company or of the company and its subsidiaries, and arranged in classes under those headings according to their nature or function in the business, the following being shown separately:—

- (a) bank loans;
- (b) bank overdrafts;
- (c) debentures held by—
  - (i) subsidiaries;
  - (ii) the holding company;
  - (iii) other related corporations; and
  - (iv) other persons;
- (d) the amount due to trade creditors and on bills payable;
- (e) other amounts payable to—
  - (i) subsidiaries;
  - (ii) the holding company; and
  - (iii) other related corporations;

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**No. 61, 1971****NINTH SCHEDULE—continued.**

(f) the aggregate amount, or estimated aggregate amount, and particulars of capital expenditure contracted for, so far as the amount has not been provided for;

(g) the amounts and descriptions of other liabilities and particulars of their nature.

(3) There shall be shown in the accounts or group accounts, if not otherwise shown, as at the end of the financial year (whether by way of note or otherwise), contingent liabilities, with a statement as to the general nature thereof and, so far as practicable, the maximum amount, or an estimate of the maximum amount, for which the company or the company and its subsidiaries could become liable in respect thereof.

(4) There shall be shown separately in the accounts or group accounts as at the end of the financial year (whether by way of note or otherwise) the amounts and descriptions of all fixed assets, intangible assets, current assets, investments and assets of any other kind, under headings appropriate to the business of the company or of the company and its subsidiaries, and arranged in classes under those headings according to their nature or function in the business, the following being shown separately:—

(a) cash at bank and in hand;

(b) stock on hand;

(c) work in progress;

(d) government, municipal and other public debentures, stock and bonds;

(e) shares in—

(i) the holding company;

(ii) subsidiaries;

(iii) other related corporations; and

(iv) other corporations;

(f) debentures of—

(i) the holding company;

(ii) subsidiaries;

(iii) other related corporations; and

(iv) other corporations;

(g) the amount due from trade debtors and on bills receivable;

(h) other amounts receivable from—

(i) the holding company;

(ii) subsidiaries;

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- (iii) other related corporations; and
- (iv) other persons;
- (i) the total amount outstanding of any loans made, guaranteed or secured by the company or by the company and its subsidiaries, being loans made to the directors of the company or of a related corporation, or loans made to any other corporation in which a director or directors of the company, or of a related corporation, owns or own a controlling interest;
- (j) the aggregate of the amounts of any items of goodwill and of any patents and trade marks, to the extent that they have not been written off;
- (k) the amounts of each of the following, to the extent that they have not been written off—
  - (i) preliminary expenses;
  - (ii) expenses incurred in connection with any issue of shares or debentures;
  - (iii) sums paid by way of commission in respect of any shares or debentures;
  - (iv) sums allowed by way of discount in respect of debentures; and
  - (v) sums allowed by way of discount on any issue of shares; and
- (l) the amounts and descriptions of other assets, with particulars of their nature.

6. (1) In respect of each liability or contingent liability shown in the accounts or group accounts being a liability the payment of which is secured by a charge on assets of the company or of the company and its subsidiaries, whether registered or unregistered, there shall be shown a statement that it is so secured and the extent to which it is secured, and each such liability or contingent liability shall be distinguished from any other liabilities or contingent liabilities the payment of which is not so secured.

(2) Current liabilities and current assets shall be clearly distinguished from other liabilities and assets.

(3) Where by reason of the manner in which the records of a company were kept before the commencement of section six of the Companies (Amendment) Act, 1971, it is not possible to show separately the amounts of any classes of assets or liabilities required by this Schedule to be separately shown, there shall be shown the total amount of assets or liabilities of those classes acquired or incurred before that commencement, and the separate amounts of assets or liabilities of those classes acquired or incurred after that commencement.

NINTH

**No. 61, 1971****NINTH SCHEDULE—continued.**

7. (1) In respect of all fixed assets, investments, stock on hand and work in progress shown in the balance-sheet there shall be stated the method of arriving at the amount thereof, and when more than one method is used a separate total shall be shown in respect of each of the methods used.

(2) There shall be shown in respect of each class of fixed assets or investments referred to in the accounts or group accounts—

- (a) the cost thereof, or (at the option of the directors) where they have been valued, the amount thereof as so valued, and, where the valuation applies only to part of such a class, separate totals for such of the assets as have been valued and for the remainder of the assets of that class;
- (b) the aggregate amount written off in respect of each class or part of a class since the date of acquisition or valuation, as the case may be; and
- (c) the difference between the amounts shown under paragraph (a) and paragraph (b) of this subclause.

(3) For the purposes of subclause (2) of this clause, the net amount at which any assets stood in the company's records at the commencement of section six of the Companies (Amendment) Act, 1971 (after deduction of the amounts previously provided or written off for depreciation, diminution in value or amortisation) shall, if the figures relating to the period before that commencement cannot be obtained without unreasonable expense or delay, be treated, until a valuation is made, as if it were the amount of a valuation of those assets made on the date of that commencement, and where any of those assets are sold, that net amount (less the net amount at which the assets sold stood in the records as at that date, or if no separate amount is available, their estimated value as at that date) shall be treated as if it were the amount of a valuation of the remaining assets made on that date.

(4) Paragraphs (b) and (c) of subclause (2) of this clause do not apply to fixed assets the replacement of which is dealt with wholly or partly—

- (a) by making any provision for renewal or replacement and charging the cost of renewal or replacement against that provision; or
- (b) by charging the cost of renewal or replacement directly against revenue,  
but in respect of those assets there shall be stated—
- (c) the method by which their renewal or replacement is dealt with; and
- (d) the aggregate amount of the provisions (if any) made for renewal or replacement and not used.

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NINTH SCHEDULE—*continued.*

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(5) If any investments of a class for which paragraph (d), (e) or (f) of subclause (4) of clause 5 requires a separate amount to be shown are quoted on any prescribed stock exchange in Australia or elsewhere, a separate total shall be shown for the quoted investments of each class, and there shall also be shown the aggregate quoted market value, calculated on the official quotation of that exchange, of the quoted investments of each class.

(6) Where the amount of any fixed asset or investment (other than an investment the quoted market value of which has been included in an aggregate market value in accordance with subclause (5) of this clause) is shown at a valuation or at a valuation less amounts written off, there shall be shown (whether by way of note or otherwise) the date of the valuation, and whether the valuation was made by an officer of the company or of a related corporation or by a person not being such an officer.

(7) If the valuation referred to in subclause (6) of this clause was made after the commencement of section six of the Companies (Amendment) Act, 1971, by a person not being such an officer, the name of the person who valued it and particulars of his qualifications shall be shown in the first accounts in which reference is made to the valuation.

(8) For the purposes of subclause (6) of this clause, the expression "officer's valuation" may be used to indicate a valuation made by an officer of the company or of a related corporation, and the expression "independent valuation" may be used to indicate a valuation made by a person not being such an officer.

(9) In addition to any other information required to be shown, there shall be shown separately (whether by way of note or otherwise), in respect of land or interests in land acquired or held for sale or resale to the extent to which they have not been written off—

- (a) the total cost of acquisition (exclusive of any costs of surveys, roads and drainage and other development expenses);
- (b) the total of any development expenses capitalised; and
- (c) the total of any amounts of rates, taxes or interest and any other amounts capitalised.

8. There shall be shown (whether by way of note or otherwise) in the balance-sheet of every company which is a borrowing corporation or a guarantor corporation a schedule setting out, separately, estimates of the amounts payable by, and the debts payable to, the company—

- (a) not later than two years;
- (b) later than two years but not later than five years; and

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NINTH SCHEDULE—*continued.*

(c) later than five years,  
after the end of the financial year.

9. (1) Group accounts of a holding company shall state (whether by way of note or otherwise)—

- (a) the name and place of incorporation of each subsidiary, and if any business of the subsidiary is carried on in a country other than Australia, the name of that country;
- (b) the amount of the holding company's investment in each class of the share capital of each subsidiary;
- (c) the percentage of each class of the shares in each subsidiary held by the holding company; and
- (d) where the financial year of a subsidiary does not coincide with the financial year of the holding company, the date on which the financial year of the subsidiary ends.

(2) Where any consolidated accounts are to be laid before a holding company at its Annual General Meeting, transactions and balances between the corporations covered by the consolidated accounts shall be eliminated in determining any amounts to be stated in the consolidated accounts.

(3) Subject to subclause (4) of this clause, where separate accounts of a subsidiary are to be laid before the holding company at its Annual General Meeting as part of the group accounts, the accounts of the subsidiary shall, as far as practicable, be in the same form as the accounts of the holding company.

(4) In the case of a subsidiary incorporated outside the State (whether or not it has established a place of business in the State), it shall be sufficient compliance with the provisions of subclause (3) of this clause if the accounts of the subsidiary—

- (a) are in such form;
- (b) are reported on by an auditor in such manner;
- (c) contain such particulars; and
- (d) include or are accompanied by such documents (if any), as is or are required by the law of its place of incorporation concerning accounts to be laid before the subsidiary in general meeting.

(5) Where group accounts are prepared otherwise than as one set of consolidated accounts covering the group, the directors of the holding company shall certify on, or in a certificate attached to, the accounts—

- (a) that the preparation of one such set of consolidated accounts is impracticable or that it is preferable, in the interests of the shareholders, that the accounts be prepared in the form in which they are prepared (as the case may be), for reasons to be stated in the certificate; and

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*Companies (Amendment).***NINTH SCHEDULE—continued.****No. 61, 1971**

(b) that, in the opinion of the directors, the accounts so prepared are not significantly affected by transactions and balances between the corporations covered by the accounts, except to the extent stated in any notes forming part of the accounts.

(6) Where any accounts included in group accounts laid before a holding company at its Annual General Meeting are presented in a form or grouping different from that in which the immediately preceding group accounts (if any) were so laid, the directors shall certify on, or in a certificate attached to, the accounts the names of the corporations the accounts of which have been so presented and the reasons for presenting them in that form or grouping.

(7) A certificate under subclause (5) or (6) of this clause shall be signed by not less than two directors.

10. All amounts shown in the accounts or group accounts shall be expressed in Australian currency, and where any conversion has been made otherwise than on the basis of the rate of exchange current at the end of the financial year of the company or holding company an explanation of the methods used in calculating the conversion shall be given.

11. (1) Except in the case of the first accounts after the incorporation of the company and in the case of the first group accounts after the company becomes a holding company there shall be shown—

- (a) in every balance-sheet the corresponding amounts as at the end of the immediately preceding financial year; and
- (b) in every profit and loss account the corresponding amounts for the corresponding period of the immediately preceding financial year,

and where the respective financial years are not equal in length, the periods covered shall be clearly indicated by way of note or otherwise.

(2) If—

- (a) the balance-sheet does not include an item corresponding to an item in the balance-sheet as at the end of the immediately preceding financial year; or
- (b) the profit and loss account does not include an item corresponding to an item in the profit and loss account covering the corresponding period of the immediately preceding financial year,

that previous item and the amount thereof shall be shown.

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**NINTH SCHEDULE—continued.**

12. (1) Where the accounts or group accounts could be misleading by reason of a failure to explain the method used in dealing with, or calculating the amount of, any item or information included in or excluded from the accounts or group accounts, there shall be stated (whether by way of note or otherwise) the method used to deal with, or calculate the amount of, the item or information.

(2) Any sums which consist of or are in the nature of interest, accommodation charges, service charges, maintenance charges or insurance premiums, being income that has not been earned at the end of the financial year, shall not be included in the gross amount of debts owing to the company or the company and its subsidiaries unless that unearned income is shown as a deduction from that gross amount.

(3) A short statement of the method by which the amount of unearned income has been calculated shall be included in the accounts or group accounts (whether by way of note or otherwise).

(2) An amendment made by subsection one of this section, not being—

(a) an amendment made by paragraph (e), (f), (j), (k) or (m) of that subsection; or

(b) an amendment made by paragraph (h) of that subsection, in so far as it operates to substitute or insert in the Principal Act sections one hundred and sixty-five to 166B, both inclusive,

does not apply, in relation to a company, to or in respect of the financial year of the company that began on or before the commencement of the amendment and ends after that commencement.

(3) To the extent to which, by virtue of subsection two of this section, an amendment made by subsection one of this section does not apply in relation to a company, Divisions 1 and 2 of Part VI of, and the Ninth Schedule to, the Principal Act so apply as if the amendment had not been enacted.

(4)

*Companies (Amendment).*

(4) An auditor of a company holding office immediately before the commencement of paragraph (h) of subsection one of this section shall be deemed to have retired immediately before the annual general meeting of the company next held after that commencement but, subject to the provisions of the Principal Act, as amended by this Act, shall be eligible for re-appointment.

**PART IV.****SPECIAL INVESTIGATIONS.****7. The Principal Act is further amended—**

Further  
amendment  
of Act No.  
71, 1961.

(a) by inserting next after the matter relating to Part VI Sec. 3. in section three the following new matter :— (Division into Parts.)

**PART VIA.—SPECIAL INVESTIGATIONS—  
ss. 168–180.**

(b) by inserting next after Part VI the following new Part :— **New Part VIA.**

**PART VIA.—SPECIAL INVESTIGATIONS.**

168. (1) In this Part, except to the extent that the contrary intention appears— **Interpretation and application.**

“affairs” in relation to a company includes—

- (a) the promotion, formation, membership, control, trading, dealings, business and property of the company;
- (b) the ownership of shares in, debentures of, and interests made available by, the company;

(c)

*Companies (Amendment).***No. 61, 1971**

- (c) matters concerned with the ascertainment of the persons who are or have been financially interested in the success or failure or apparent success or failure of the company or are or have been able to control or materially to influence the policy of the company; and
- (d) the circumstances under which a person acquired or disposed of or became entitled to acquire or dispose of shares in, debentures of, or interests made available by, the company;

“company” means company as defined in subsection (1) of section five and includes—

- (a) a foreign company registered under Division 3 of Part XI; and
- (b) where the Minister has appointed an inspector under subsection (2) of section one hundred and seventy to investigate the affairs of a corporation, that corporation;

“inspector” means inspector appointed under this Part;

“interest” has the same meaning as in section seventy-six;

“officer”

*Companies (Amendment).*

"officer", in relation to a company, means No. 61, 1971  
officer as defined in subsection (1) of  
section five and includes—

(a) a person who acts or has at any  
time acted as banker, solicitor,  
auditor or in any other capacity  
for the company;

(b) a person who—

(i) has, or has at any time  
had, in his possession any  
property of the company;

(ii) is indebted to the  
company; or

(iii) is capable of giving infor-  
mation concerning the  
affairs of the company;  
and

(c) where an inspector has reasonable  
grounds for suspecting or believ-  
ing that a person is a person  
referred to in paragraph (b) of  
this definition—that person.

(2) This Part does not authorise an  
investigation into affairs of a corporation in relation  
to business of the corporation that is life insurance  
business for the purposes of the Life Insurance  
Act 1945–1966 of the Commonwealth as amended  
or re-enacted from time to time.

**No. 61, 1971**Application for appointment of inspector.

**169. (1) An application for the appointment of an inspector to investigate—**

- (a) affairs of a company; or
- (b) such of the affairs of a company as are specified in the application,

may be made to the Minister by instrument in writing.

**(2) The application may be made—**

- (a) where the company not being a banking corporation has a share capital—
  - (i) by not less than one hundred members of the company;
  - (ii) by members holding not less than one-tenth of the issued shares in the company; or
  - (iii) by members holding not less than one-tenth of the paid-up capital of the company;
- (b) where the company is a banking corporation that has a share capital—by members holding not less than one-third of the issued shares in the company;
- (c) where the company does not have a share capital—by not less than one-tenth of the members of the company;
- (d) where the company not being a banking corporation has issued debentures—by the trustee for the holders of the debentures or by the holders of not less than one-tenth in nominal value of the issued debentures;

(e)

*Companies (Amendment).*

- (e) where the company has made available No. 61, 1971 interests—by the trustee for or representative of the holders of interests or by not less than one-tenth of the holders of the interests; or
- (f) by the company in pursuance of a special resolution.

(3) Where an application is made under this section the applicants shall furnish such information in connection with the application as the Minister requires to enable him to determine whether there are reasonable grounds for appointing an inspector.

(4) Where an application is made under this section the Minister shall, if he is satisfied that there are reasonable grounds for appointing an inspector and the applicants have complied with the provisions of this section, by instrument in writing appoint an inspector to investigate the affairs of the company to which the application relates or, if he is of the opinion that an investigation ought not to be made into all those affairs, into such of those affairs as he is satisfied ought to be investigated and specifies in the instrument.

170. (1) Where it appears to the Minister that—

- (a) it is desirable for the protection of the public or of members or creditors of a company or of holders of debentures of a company or of interests made available by a company;
- (b) it is in the public interest because fraud or misfeasance or other misconduct by a person who is or has been concerned with affairs of a company is alleged; or
- (c) in any case it is in the public interest,

to

Appoint-  
ment of  
inspector.

**No. 61, 1971**

to appoint an inspector to investigate affairs of a company he may by instrument in writing appoint an inspector.

(2) Where—

- (a) under a law of another State or of a Territory of the Commonwealth corresponding to this Part a person has been appointed to investigate affairs of a corporation; and
- (b) the Minister is satisfied that in connection with that investigation it is expedient that an investigation be made into affairs of that corporation in the State,

the Minister may by instrument in writing appoint that person an inspector to investigate affairs of the corporation in the State or, if he is of the opinion that an investigation ought not to be made into all those affairs, into such of those affairs as he is satisfied ought to be investigated and specifies in the instrument.

(3) The Minister may, by instrument in writing, declare that a specified person whom he could appoint under subsection (2) of this section to investigate affairs of a specified corporation in the State shall have, in relation to the investigation of affairs of the corporation and subject to such terms and conditions as are specified in the instrument, such of the powers of an inspector appointed under subsection (1) of this section as are specified in the instrument, and the person so specified shall thereupon have the powers so specified, subject to the terms and conditions so specified, as if—

- (a) the corporation were a company within the meaning of subsection (1) of this section; and

(b)

*Companies (Amendment).*

(b) that person had been appointed an No. 61, 1971 inspector under this section.

171. (1) The Minister shall, in the instrument appointing an inspector, specify full particulars of the appointment including—

- (a) the matters into which the investigation is to be made being all the affairs or particular affairs of a company;
- (b) the period in respect of which the investigation is to be made; and
- (c) the terms and conditions of the appointment of the inspector including terms and conditions relating to remuneration.

(2) The Minister may by notice in writing given to an inspector terminate his appointment at any time.

(3) Notice of the appointment, and notice of the termination of the appointment, of an inspector shall be published in the Gazette.

172. Where an inspector thinks it necessary for the purposes of the investigation of affairs of a company to investigate affairs of a corporation which is or has at any relevant time been a related corporation he may with the consent in writing of the Minister investigate affairs of that corporation.

173. (1) An inspector may require an officer of a company affairs of which are being investigated under this Part by notice in writing in accordance with the prescribed form given in the prescribed manner—

- (a) to produce to the inspector such books of the company and other books relating to affairs of the company as are in the custody or under the control of the officer;

(b)

(b) to give to the inspector all reasonable assistance in connection with the investigation; and

(c) to appear before the inspector for examination on oath.

(2) An inspector may administer the oath referred to in paragraph (c) of subsection (1) of this section.

(3) An inspector shall not exercise his powers under subsection (1) of this section in respect of an officer of a company affairs of which he is investigating under section one hundred and seventy-two unless he has furnished to the officer a certificate in accordance with the prescribed form stating that he is investigating affairs of the company under that section and that the officer is an officer of the company.

(4) Where books are produced to an inspector under this Part the inspector may take possession of the books for such period as he considers necessary for the purposes of the investigation and during that period he shall permit a person who would be entitled to inspect any one or more of those books if they were not in the possession of the inspector to inspect at all reasonable times such of those books as that person would be so entitled to inspect.

(5) For the purposes of this section, an investigation of affairs of a company shall be deemed to be a legal proceeding within the meaning of Part IV of the Evidence Act, 1898.

*Companies (Amendment).*

174. (1) Where affairs of a company are being investigated under this Part, an officer of the company shall not—

Examina-  
tion of  
officers.

- (a) refuse or fail to comply with a requirement of an inspector under section one hundred and seventy-three to the extent to which he is able to comply with it;
- (b) in purported compliance with such a requirement knowingly furnish information that is false or misleading in a material particular; or
- (c) when appearing before an inspector for examination in pursuance of such a requirement—
  - (i) make a statement that is false or misleading in a material particular; or
  - (ii) refuse or fail to take an oath.

Penalty : One thousand dollars.

(2) A duly qualified legal practitioner acting for the officer—

- (a) may attend the examination; and
- (b) may, to the extent that the inspector permits—
  - (i) address the inspector; and
  - (ii) examine the officer,

in relation to matters in respect of which the inspector has questioned the officer.

(3) The officer is not excused from answering a question put to him by the inspector on the ground that the answer might tend to incriminate him but, where the officer claims, before answering the question, that the answer might tend to incriminate him, neither the question nor the

answer

**No. 61, 1971**

answer is admissible in evidence against him in criminal proceedings other than proceedings under subsection (1) of this section or in relation to a charge of perjury in respect of the answer.

(4) A person who complies with the requirement of an inspector under section one-hundred and seventy-three shall not incur any liability to any person by reason only of that compliance and for the purposes of this subsection a certificate under subsection (3) of section one-hundred and seventy-three is conclusive evidence of the facts required to be stated in that certificate.

(5) A person required to attend for examination under this Part is entitled to such allowances and expenses as are from time to time prescribed.

(6) Regulations for the purposes of subsection (5) of this section may be made by reference to a scale of expenses for witnesses who attend before the Court.

Officer failing to comply with requirement of this Part.

175. (1) Where an officer of a company fails to comply with a requirement of an inspector appointed to investigate affairs of the company, the inspector may, unless the officer proves that he had a lawful excuse for his failure, apply to the Court for an order under subsection (2) of this section.

(2) Where an inspector applies to the Court under subsection (1) of this section the Court may inquire into the case and—

(a) order the officer to comply with the requirement of the inspector within such period as is fixed by the Court; or

(b)

*Companies (Amendment).*

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(b) if the Court is satisfied that the officer No. 61, 1971 failed without lawful excuse to comply with the requirement of the inspector, punish him in like manner as if he had been guilty of contempt of the Court and, if it sees fit, also make an order pursuant to paragraph (a) of this subsection.

176. (1) An inspector may cause notes of an examination made by him under this Part to be recorded in writing and be read to or by the person examined and may require that person to sign the notes and, subject to this section, notes signed by that person may be used in evidence in any legal proceedings against that person.

(2) A copy of the notes signed by a person shall be furnished without charge to that person upon request made by him in writing.

(3) Notes made under this section that relate to a question the answer to which a person has claimed might tend to incriminate him shall not be used as evidence in criminal proceedings other than proceedings under subsection (1) of section one hundred and seventy-four or in relation to a charge of perjury in respect of the answer.

(4) Nothing in this section affects or limits the admissibility of other written evidence or of oral evidence.

(5) The Minister may give a copy of notes made under this section to a duly qualified legal practitioner who satisfies the Minister that he is acting for a person who is conducting or is, in good faith, contemplating legal proceedings in respect of affairs of a company, being affairs investigated by an inspector under this Part.

(6)

*Companies (Amendment).*

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(6) A duly qualified legal practitioner to whom a copy of notes is given under subsection (5) of this section shall use the notes only in connection with the institution or preparation of, and in the course of, legal proceedings and shall not publish or communicate for any other purpose the notes or any part of the contents of them to any person.

Penalty : Two hundred dollars.

(7) Where a report is made under section one hundred and seventy-eight any notes recorded under this section relating to that report shall be furnished with the report.

Delegation  
of powers,  
&c., by  
inspector.

177. (1) An inspector may by instrument in writing—

- (a) delegate all or any of his powers or functions under this Part except this power of delegation, the power to administer an oath and the power to examine on oath; and
- (b) vary or revoke a delegation given by him.

(2) A power or function delegated by an inspector may be exercised or performed by the delegate in accordance with the instrument of delegation as in force from time to time.

(3) A delegate shall on request by an officer of a company affairs of which are being investigated under this Part produce the instrument of delegation for inspection.

(4) A delegation under this section by an inspector of a power or function does not prevent the exercise of the power or the performance of the function by the inspector.

*Companies (Amendment).*

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178. (1) An inspector may, and if so directed No. 61, 1971 by the Minister shall, make interim reports to the Minister and on the completion or termination of investigation the inspector shall report his opinion on or in relation to the affairs of the company or companies which he has investigated, together with the facts upon which his opinion is based, to the Minister.

(2) Subject to subsection (3) of this section, a copy of a final report shall, and a copy of the whole or any part of an interim report may, if the Minister thinks fit, be forwarded by the Minister to the registered office, in the place of its incorporation, of the company to which the report relates, and a further copy of any report so forwarded shall, at the request of an applicant under section one hundred and sixty-nine, be delivered to him.

(3) The Minister is not bound to furnish a company or any other person with a copy of any part of a report by an inspector or with a complete copy thereof, if the Minister is of opinion that there is good reason for not divulging the contents of the report or of parts thereof.

(4) The Minister may, if he is of the opinion that it is necessary in the public interest so to do, cause the whole or any part of a report by an inspector, or of any interim report by an inspector to be printed and published.

(5) Where an inspector has caused notes of an examination under this Part to be forwarded to the Minister with the report to which they relate, a copy of the notes may, subject to section one hundred and seventy-six, be supplied to such persons and upon such conditions as the Minister thinks fit.

(6)

No. 61, 1971

(6) If from a report under this section, or from the notes of an examination under this Part, the Minister is of the opinion that an offence may have been committed by a person and that the case is one in which a prosecution ought to be instituted, the Minister shall cause a prosecution to be instituted accordingly.

(7) Where the Minister has formed the opinion referred to in subsection (6) of this section he may, by notice in writing given before or after the institution of a prosecution in accordance with that subsection, require an officer of the company of which affairs were investigated (not being an officer who is or, in the opinion of the Minister, is likely to be, a defendant in the proceedings) to give all assistance in connection with the prosecution or proposed prosecution that he is reasonably able to give.

(8) Where a person to whom a notice has been given under subsection (7) of this section fails to comply with a requirement specified in the notice the Court may, on the application of the Minister, direct that person to comply with the requirement.

(9) If from a report under this section, or from the notes of an examination under this Part, the Minister is of the opinion that proceedings ought in the public interest to be brought by a company, affairs of which were investigated by the inspector, for the recovery of damages in respect of fraud, misfeasance or other misconduct in connection with affairs of the company or for the recovery of property of the company the Minister may cause proceedings to be instituted accordingly in the name of the company.

(10)

*Companies (Amendment).*

(10) A copy of a report of an inspector No. 61, 1971 purporting to be certified as such a report by the Minister is admissible in legal proceedings as evidence of the inspector's report of his opinion for the purposes of paragraph (g) of subsection (1) of section two hundred and twenty-two.

179. (1) Subject to this section, the expenses of and incidental to an investigation under this Part (including the expenses incurred and payable by the Minister in any proceedings brought by him in the name of a company) shall be paid out of moneys provided by Parliament.

(2) Where the Minister is of the opinion that the whole or any part of the expenses of and incidental to an investigation into affairs of a company under this Part (including the expenses incurred and payable by the Minister in any proceedings brought by him in the name of a company) should be paid by the company, the Minister may by order direct that the expenses or part thereof be so paid or, if they have been paid under subsection (1) of this section, direct the company to reimburse the Crown and may, in either case, direct the company to reimburse the Crown in respect of the remuneration of any servant of the Crown concerned with the investigation.

(3) An order under subsection (2) of this section may specify the amount of the expenses to be paid or reimbursed and the time or times and the manner in which the payment or reimbursement of the expenses shall be made.

(4) Where an order has been made by the Minister under subsection (2) of this section, the company named in the order, to the extent therein specified, is liable to pay expenses or reimburse the Crown.

(5)

No. 61, 1971

(5) Any amount for which a company is liable pursuant to an order under subsection (2) of this section may be recovered as a debt due to the Crown in a court of competent jurisdiction.

(6) An inspector may include in his report a recommendation whether an order under subsection (2) of this section should be made, or whether application under subsection (7) of this section for a like order should be made, or whether such an order and such an application should both be made.

(7) An application referred to in subsection (8) of this section may be made to a court by or on behalf of the Minister—

(a) in the course of proceedings in that court instituted in the name of a company under subsection (9) of section one hundred and seventy-eight; or

(b) upon, or within fourteen days after, a conviction by the court in proceedings certified by the Minister, for the purposes of the application, to have been instituted as a result of an investigation under this Part of affairs of a specified company,

and that court may make such order with respect to the application or its subject-matter as it thinks fit.

(8) The application that may be made under subsection (7) of this section is an application for the same order against a specified person (being, where the application is made under paragraph (a) of that subsection, a party to the proceedings or being, where the application is made under paragraph (b) of that subsection, the person

the

*Companies (Amendment).*

the subject of the conviction) as the Minister is No. 61, 1971 empowered by subsection (2) of this section to make—

- (a) in the case of an application under paragraph (a) of subsection (7) of this section—against the company in whose name the proceedings were instituted; or
- (b) in the case of an application under paragraph (b) of subsection (7) of this section—against the company referred to in the Minister's certificate.

(9) The provisions of subsections (3), (4) and (5) of this section apply, with such modifications as may be necessary, to and in relation to an order made pursuant to an application under subsection (7) of this section as if that order were an order made by the Minister under subsection (2) of this section.

## 179A. (1) A person who—

- (a) conceals, destroys, mutilates or alters a book of or relating to a company affairs of which are being investigated under this Part; or
- (b) sends, causes to be sent or conspires with another person to send, out of the State such a book or any property belonging to or under the control of the company,

Concealing,  
&c., books  
of company.

is guilty of an offence against this Act.

Penalty : Four thousand dollars or imprisonment for two years.

(2) In a prosecution for an offence under subsection (1) of this section it is a defence if the person charged with the offence proves that he did not act with intent to defeat the purposes of this Part or to delay or obstruct the carrying out of an investigation under this Part.

179B.

*Companies (Amendment).***No. 61, 1971****Orders may  
be made by  
Minister.**

179B. (1) Where an investigation into affairs of a company is being made under this Part and it appears to the Minister that facts concerning shares in, debentures of, or interests made available by, the company or rights relating to the issue of shares by the company cannot be ascertained because an officer of the company has failed or refused to comply with a requirement of an inspector under section one hundred and seventy-three, the Minister may by order published in the Gazette make one or more of the following orders :—

- (a) An order restraining a person from disposing of any interest in shares in, debentures of, or interests made available by, the company or in rights relating to the issue of shares by the company.
- (b) An order restraining a person from acquiring shares in, debentures of, or interests made available by, the company or rights relating to the issue of shares by the company.
- (c) An order restraining the exercise of any voting or other rights attached to shares in the company.
- (d) An order directing a person who is registered as the holder of shares in respect of which an order under this section is in force to give notice in writing of that order to any person whom he knows to be entitled to exercise a right to vote attached to those shares.
- (e) An order directing the company not to make payment, except in the course of winding up, of any sum due from the company in respect of shares in, debentures of, or interests made available by, the company.

(f)

*Companies (Amendment).*

(f) An order directing the company not to No. 61, 1971 register the transfer or transmission of shares in, debentures of, or interests made available by, the company.

(g) An order directing the company not to issue shares to a person who holds shares in the company by reason of his holding shares in the company nor in pursuance of an offer made to such a person by reason of his holding shares in the company.

(2) A copy of an order under subsection (1) of this section and of any order by which it is rescinded, revoked, altered or varied shall be served on the company to which it refers.

(3) Where an order made under subsection (1) of this section is in force a person aggrieved by the order may apply to the Court for revocation or variation of the order and the Court may if it is satisfied that it is reasonable to do so revoke or vary the order and any order by which it has been altered or varied.

(4) A person who contravenes or fails to comply with an order under subsection (1) of this section is guilty of an offence against this Act.

Penalty : One thousand dollars. Default penalty : Two hundred dollars.

(5) Where an offence under subsection (4) of this section is committed by a company, every officer (as defined in subsection one of section five) of the company who is in default is guilty of an offence against this Act.

Penalty :

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**Penalty : One thousand dollars. Default penalty : Two hundred dollars.**

(6) A prosecution under this section shall not be instituted without the consent in writing of the Minister.

Application  
for winding  
up.

180. (1) Where a report of an investigation under this Part has been made by an inspector in respect of a company or foreign company application may be made to the Court by the Minister—

- (a) if the company is incorporated under this Act, for the winding up of the company; or
- (b) if the company is a foreign company, for the winding up of the company so far as its assets in the State are concerned.

(2) Upon the making of the application, the provisions of this Act shall, with such adaptations as are necessary, apply as if—

- (a) in the case of a company not being a foreign company—proceedings in the Court for winding up had been commenced by the company; and
- (b) in the case of a foreign company—proceedings for an order for the affairs of the company so far as assets in the State are concerned to be wound up in the State had been commenced in the Court by a creditor or contributory of the company upon the liquidation of the company in the place in which it is incorporated.

(3)

*Companies (Amendment).*

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(3) Where, in the case of a foreign company, on an application under subsection (1) of this section an order is made for the company so far as its assets in the State are concerned to be wound up within the State, the company shall not carry on business or establish or keep a place of business in the State.

- (c) by omitting from paragraph (e) of subsection one of section two hundred and twenty-one the words "one hundred and seventy-five" and by inserting in lieu thereof the words "one hundred and eighty";
- (d) by omitting from paragraph (g) of subsection one of section two hundred and twenty-two the words "section one hundred and sixty-nine or section one hundred and seventy or section one hundred and seventy-three" and by inserting in lieu thereof the word and letters "Part VIA";
- (e) by omitting section three hundred and sixty-seven and by inserting in lieu thereof the following section :—

367. Neither an inspector within the meaning of Part VIA nor a person authorised by him pursuant to section one hundred and seventy-seven shall require disclosure by a duly qualified legal practitioner of any privileged communication, whether oral or written, made to or by him in that capacity, except as respects the name and address of his client.

Privileged communications.

8. (1) Part VIA of the Principal Act, as amended by this Act, applies to and in relation to an investigation to which Division 3 or 4 of Part VI of the Principal Act as in force immediately before the commencement of section seven of this Act applied and which had not been completed before that commencement.

(2)

No. 61, 1971

(2) An inspector to whom Division 3 or 4 of Part VI of the Principal Act as in force immediately before the commencement of section seven of this Act applied shall be deemed to have been appointed under Part VIA of the Principal Act, as amended by this Act.

(3) Where before the commencement of section seven of this Act an act, matter or thing had been done, or had arisen in the course of an investigation to which Division 3 or 4 of Part VI of the Principal Act as in force immediately before that commencement applied and which had not been completed, that act, matter or thing shall have the same status, operation and effect in relation to the completion of the investigation after that commencement as if that act, matter or thing had been done or had arisen after that commencement.

(4) In particular and without affecting the generality of subsection (3) of this section, an order, application, examination, deposition, writ, summons, proceeding, record, note or report made, effected, issued or given in relation to an investigation to which Division 3 or 4 of Part VI of the Principal Act as in force immediately before the commencement of section seven of this Act applied shall have the same status, operation and effect in relation to the completion of the investigation after that commencement as if the order, application, examination, deposition, writ, summons, proceeding, record, note or report had been made, effected, issued or given after that commencement.

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PART

## PART V.

No. 61, 1971

## DEFAULTING OFFICERS.

## 9. The Principal Act is further amended—

Further  
amendment  
of Act No.  
71, 1961.

- (a) by omitting from section two hundred and nine the words "three hundred and four, three hundred and five"; Sec. 209.  
(Application of certain provisions in winding up to official management.)
- (b) by omitting section three hundred; Sec. 300.  
(Offences by officers of companies in liquidation.)
- (c) by omitting section three hundred and one; Sec. 301.  
(Inducement to be appointed liquidator.)
- (d) by omitting section three hundred and two; Sec. 302.  
(Frauds by officers.)
- (e) by omitting section three hundred and three; Sec. 303.  
(Liability where proper accounts not kept or debts incurred without reasonable expectation of payment.)
- (f)

No. 61, 1971 (f) by omitting section three hundred and four;

Sec. 304.  
(Responsi-  
bility for  
fraudulent  
trading.)

Sec. 305.  
(Power of  
Court to  
assess  
damages  
against  
delinquent  
officers,  
&c.)

New secs.  
367A-367C.

Power to  
examine  
defaulting  
officers.

(g) by omitting section three hundred and five;

(h) by inserting next after section three hundred and sixty-seven the following new sections :—

367A. (1) Where it appears to the Commission that any officer or former officer of a company to which this section applies has conducted himself in such a way that the officer or former officer has rendered himself liable to action by the company in relation to the performance of his duties as an officer of the company, the Commission, or any person who is authorised in that behalf by the Commission, may apply to the Court without notice to the officer or former officer for an order that the officer or former officer attend before the Court on a day to be appointed by the Court to be examined as to his conduct and dealings as an officer of the company.

(2) Any examination under this section shall be conducted in the absence of the public unless the Court otherwise orders.

(3) The Court, on making an order under subsection (1) of this section or at any subsequent time on the application of any person concerned, may give such directions as to the matters to be inquired into and as to the procedure to be followed in relation to the examination as it thinks fit.

(4)

*Companies (Amendment).*

(4) The applicant and, with the leave of No. 61, 1971 the Court, any creditor or member of the company may take part in the examination either personally or by a solicitor or by counsel.

## (5) The person examined—

- (a) shall be examined on oath;
- (b) shall answer all questions which the Court puts or allows to be put to him; and
- (c) is not entitled to refuse to answer any question that is relevant or material to the examination on the ground that his answer might tend to incriminate him,

but if he claims that the answer to any question might incriminate him and but for this subsection he would have been entitled to refuse to answer the question, the answer shall not be used in any subsequent criminal proceedings against him except in the case of a charge against him for perjury committed by him in answer to that question.

(6) A person ordered to be examined under this section may be represented by a solicitor with or without counsel who shall be at liberty to put to him questions for the purpose of enabling him to explain his conduct and dealings as an officer of the company or to explain or qualify any answer given by him.

## (7) Notes of the examination—

- (a) shall be reduced to writing;
- (b) shall be read over to or by and signed by the person examined;
- (c)

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- (c) may thereafter, subject to subsection (5) of this section, be used in evidence in any legal proceedings against the person examined; and
- (d) may be inspected and copied by the person examined, the Commission or applicant or, with the consent of the Court, by any creditor or member of the company.

(8) Where the Court is satisfied that an order for an examination under this section was obtained without reasonable cause, it may order the whole or any part of the costs incurred by the person ordered to be examined to be paid by the applicant or by any other person who with the leave of the Court takes part in the examination.

**Power of Court to assess damages against delinquent officers.**

367B. (1) Where it appears to the Commission that any person who has taken part in the formation, promotion, administration, management or winding up of a company to which this section applies—

- (a) has misapplied or retained or become liable or accountable for any money or property of the company; or
- (b) has been guilty of any misfeasance or breach of trust in relation to the company,

the Commission, or any person who is authorised in that behalf by the Commission, may apply to the Court to examine the conduct of that person and for an order that that person—

- (c) repay or restore the money or property or such part thereof as the Court thinks fit together with interest at such rate as the Court thinks just; or

(d)

*Companies (Amendment).*

(d) pay to the company such sum by way of No. 61, 1971 damages in respect of the misapplication, retainer, misfeasance or breach of trust, as the Court thinks just.

(2) This section extends and applies to the receipt of any money or property by any officer or former officer of the company, whether by way of salary or otherwise, which appears to the Court to have been unfair or unjust to the company or its members.

(3) The provisions of this section apply notwithstanding that the person concerned may be criminally liable in respect of the matters in respect of which the order is sought.

(4) Where the Court is satisfied that an application was made under this section without reasonable cause, it may order the whole or any part of the costs incurred by the person against whom the order was sought to be paid by the applicant.

367C. (1) In sections 367A and 367B "company Interpretation to which this section applies" means a company—

- (a) which is in course of being wound up;
- (b) which is under official management;
- (c) in respect of affairs of which there is an inspector within the meaning of Part VIa;
- (d) in respect of which a receiver or manager has been appointed whether by the Court or pursuant to the powers contained in any instrument; or

(e)

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(e) which has ceased to carry on business or is unable to pay its debts.

(2) For the purposes of subsection (1) of this section a company shall be deemed—

(a) to have ceased to carry on business if the Commission has—

(i) sent to the company by post a letter pursuant to the provisions of subsection (1) of section three hundred and eight; or

(ii) published in the Gazette a notice pursuant to the provisions of subsection (3) of section three hundred and eight; and

(b) to be unable to pay its debts 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 wholly or in part.

**New secs.**  
374A-374H.

(i) by inserting next after section three hundred and seventy-four the following new sections :—

**Offences by  
officers of  
certain  
companies.**

374A. (1) Every person who, being a former officer, or an officer, of a company to which this section applies—

(a) does not, to the best of his knowledge and belief, fully and truly discover to the appropriate officer all the property, real and personal, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary course of the business of the company;

(b)

*Companies (Amendment).*

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- (b) does not deliver up to the appropriate No. 61, 1971 officer, or as he directs—
  - (i) all the real and personal property of the company in his custody or under his control which he is required by law to deliver up; or
  - (ii) all books and papers in his custody or under his control belonging to the company which he is required by law to deliver up;
- (c) within five years next before the relevant day or at any time on or after that day—
  - (i) has concealed any part of the property of the company to the value of one hundred dollars or upwards, or has concealed any debt due to or from the company;
  - (ii) has fraudulently removed any part of the property of the company to the value of one hundred dollars or upwards;
  - (iii) has concealed, destroyed, mutilated or falsified, or has been privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to the property or affairs of the company;
  - (iv) has made or has been privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company;

(v)

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- (v) has fraudulently parted with, altered or made any omission in, or has been privy to fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company;
- (vi) by any false representation or other fraud, has obtained any property for or on behalf of the company on credit which the company has not subsequently paid for;
- (vii) has obtained on credit, for or on behalf of the company, under the false pretence that the company is carrying on its business, any property which the company has not subsequently paid for; or
- (viii) has pawned, pledged or disposed of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing was in the ordinary course of the business of the company;
- (d) wilfully makes any material omission in any statement relating to the affairs of the company;
- (e) knowing or believing that a false debt has been proved by any person, fails for a period of one month to inform the appropriate officer of his knowledge or belief;
- (f) prevents the production of any book or paper affecting or relating to the property or affairs of the company;
- (g)

*Companies (Amendment).*

(g) within five years next before the relevant No. 61, 1971 day or at any time on or after that day, has attempted to account for any part of the property of the company by making entries in the books of the company showing fictitious transactions, losses or expenses; or

(h) within five years next before the relevant day or at any time on or after that day, has been guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to its winding up,

is guilty of an offence against this Act.

Penalty : Five thousand dollars or imprisonment for two years.

(2) It is a good defence to a charge under paragraph (a), (b) or (d) or subparagraph (i), (vii) or (viii) of paragraph (c) of subsection (1) of this section if the accused proves that he had no intent to defraud, and to a charge under paragraph (f) or subparagraph (iii) or (iv) of paragraph (c) 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 an offence under subparagraph (viii) of paragraph (c) of subsection (1) 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 is guilty of an offence against this Act.

Penalty : Two thousand five hundred dollars or imprisonment for one year.

**No. 61, 1971**

Liability  
where  
proper  
accounts  
not kept.

374B. Where the provisions of section 161A or any corresponding previous enactment for the time being in force have not been complied with in respect of a company to which this section applies throughout the period of two years immediately preceding the relevant day or the period between the incorporation of the company and the relevant day, whichever is the shorter, every officer who is in default is, unless he acted honestly and shows that in the circumstances in which the business of the company was carried on the default was excusable, guilty of an offence against this Act.

Penalty : Two thousand five hundred dollars or imprisonment for one year.

**Officers.**

374C. (1) If an officer of a company to which this section applies was knowingly a party to the contracting of a debt by the company and had at the time the debt was contracted no reasonable or probable grounds of expectation, after taking into consideration the other liabilities, if any, of the company at the time, of the company being able to pay the debt, the officer is guilty of an offence against this Act.

Penalty : Five hundred dollars or imprisonment for three months.

(2) If any business of a company to which this section applies has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, any person who was knowingly a party to the carrying on of the business in that manner is guilty of an offence against this Act.

Penalty : Two thousand five hundred dollars or imprisonment for one year.

374D

*Companies (Amendment).*

374D. (1) Where a person has been convicted No. 61, 1971 of an offence under subsection (1) or subsection (2) of section 374c, the Court on the application of the appropriate officer or, with the consent of the Commission, any creditor or contributory of the company may, if it thinks proper to do so, declare that the person is personally responsible without any limitation of liability—

- (a) in the case of a conviction under subsection (1) of section 374c, for the payment to the company of an amount equal to the whole of the debt in respect of which the conviction was made, or such part thereof as the Court thinks fit; and
- (b) in the case of a conviction under subsection (2) of section 374c, for the payment to the company of the amount required to satisfy all or any of the debts of the company as the Court directs.

(2) Where the Court makes any declaration under subsection (1) of this section in relation to a person, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular, may order that the liability of the person under the declaration is a charge on any debt or obligation due from the company to him, or on any charge or any interest in any charge on any assets of the company held by or vested in him or any corporation or person on his behalf, or any person claiming as assignee from or through the person liable or any corporation or person acting on his behalf, and may, from time to time, make such further order as is necessary for the purpose of enforcing any charge imposed under this subsection.

(3)

**No. 61, 1971**

(3) For the purpose of subsection (2) of this section "assignee" includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation, or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration, not including consideration by way of marriage, given in good faith and without notice of any of the matters upon which the conviction or declaration was made.

(4) The provisions of this section have effect notwithstanding that the person concerned is criminally liable in respect of the matters on the ground of which the declaration is made.

(5) On the hearing of an application under subsection (1) of this section the appropriate officer or other applicant may himself give evidence or call witnesses.

Interpreta-  
tion.

374E. (1) In sections 374A to 374D, both inclusive—

"appropriate officer" means—

- (a) in relation to a company which is being wound up, the liquidator;
- (b) in relation to a company which is under official management, the official manager;
- (c) in relation to a company in respect of affairs of which there is an inspector within the meaning of Part VIA, the person nominated as the appropriate officer in the particular case by the Minister;

(d)

*Companies (Amendment).*


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- (d) in relation to a company in No. 61, 1971 respect of which a receiver or manager of all or any of the property of the company has been appointed whether by the Court or pursuant to the powers contained in any instrument, the receiver or manager; and
- (e) in relation to any company which has ceased to carry on business or is unable to pay its debts, the Commission;

“company to which this section applies” means a company—

- (a) which is in course of being wound up;
- (b) which is under official management;
- (c) in respect of affairs of which there is an inspector within the meaning of Part VIa;
- (d) in respect of which a receiver or manager has been appointed whether by the Court or pursuant to the powers contained in any instrument;
- (e) which has ceased to carry on business or is unable to pay its debts;

“the

(C)

No. 61, 1971

“the relevant day” means—

- (a) in relation to a company which is being wound up, the day upon which, under the provisions of this Act, the winding up is or is deemed to have commenced;
- (b) in relation to a company which is under official management, the day upon which it is determined that the company shall be placed under official management;
- (c) in relation to a company in respect of affairs of which there is an inspector within the meaning of Part VIA, the day upon which the inspector was appointed;
- (d) in relation to a company in respect of which a receiver or manager has been appointed, the day upon which the receiver or manager was appointed;
- (e) in relation to a company which is unable to pay its debts, the day upon which the execution or other process was returned unsatisfied in whole or in part; and
- (f) in relation to any company which has ceased to carry on business, the day upon which the last return was lodged by the company pursuant to the requirements of section one hundred and fifty-eight or one hundred and fifty-nine, as the case requires.

(2)

*Companies (Amendment).*

(2) For the purposes of subsection (1) No. 61, 1971 of this section a company—

- (a) shall be deemed to have ceased to carry on business if the Commission has—
  - (i) sent to the company by post a letter pursuant to the provisions of subsection (1) of section three hundred and eight and has not received an answer within one month of the date of the letter to the effect that the company is carrying on business; or
  - (ii) published in the Gazette a notice pursuant to the provisions of subsection (3) of section three hundred and eight; and
- (b) shall be deemed to be unable to pay its debts 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.

374F. (1) Any person who gives or agrees or offers to give to any member or creditor of a company any valuable consideration with a view of securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator or official manager is guilty of an offence against this Act.

Penalty : Five hundred dollars.

(2) Every officer or contributory of any company who destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any

register

**No. 61, 1971**

register or book of account or document belonging to the company with intent to defraud or deceive any person is guilty of an offence against this Act.

**Penalty :** Five thousand dollars or imprisonment for two years.

**Frauds by officers.**

374G. Every person who, while an officer of a company—

- (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,

is guilty of an offence against this Act.

**Penalty :** Five thousand dollars or imprisonment for two years.

Court may disqualify person from acting as director, &c., in certain circumstances.

374H. (1) Unless cause to the contrary is shown, the Court may, on an application by the Commission and on being satisfied as to the matters referred to in subsection (2) of this section, make an order prohibiting a person specified in the order from acting as a director of, or being concerned in the management of, any company during such period not exceeding five years after the making of the order as is specified in the order.

(2)

*Companies (Amendment).*

(2) The matters as to which the Court is No. 61, 1971 to be satisfied before making an order under subsection (1) of this section are—

- (a) that, within the period of seven years before the making of the application (whether that period commenced before or after the commencement of section nine of the Companies (Amendment) Act, 1971) the person to whom the application relates was a director of, or was concerned in the management of, two or more companies to which this section applies;
- (b) that in the case of each company referred to in paragraph (a) of this subsection, the manner in which the affairs of the company had been managed was wholly or partly responsible for the company being wound up, being under official management, ceasing to carry on business, being unable to satisfy a levy of execution, a receiver or manager of its property being appointed or its entering into a compromise or scheme of arrangement with its creditors; and
- (c) that it is in the public interest that the order should be made.

(3) A person shall not contravene or fail to comply with an order under this section that is applicable to him.

Penalty : Imprisonment for six months or one thousand dollars or both.

(4) Subsection (3) of this section does not affect the powers of the Court in relation to the punishment of contempts of the Court.

(5)

*Companies (Amendment).*

No. 61, 1971

(5) In this section, "company to which this section applies" means a company—

- (a) that has been wound up, or is in the course of being wound up, because of inability to pay its debts as and when they became due;
- (b) that has been, or is, under official management;
- (c) that has ceased to carry on business because it was unable to pay its debts as and when they became due;
- (d) in respect of which a levy of execution was not satisfied;
- (e) in respect of the property of which a receiver or manager has been appointed whether by the court or pursuant to the powers contained in an instrument; or
- (f) that has entered into a compromise or scheme of arrangement with its creditors.

## PART VI.

## MISCELLANEOUS.

Further  
amendment  
of Act No.  
71, 1961.

**10. The Principal Act is further amended—**

Sec. 5.  
(Interpre-  
tation.)

"Deed."

(a) by inserting next after the definition of "Debenture" in subsection one of section five the following new definition :—

"Deed" includes an instrument having the effect of a deed under any Act.

(b)

*Companies (Amendment).*

(b) by omitting paragraph (a) of the definition of No. 61, 1971 "Foreign company" in the same subsection and by inserting in lieu thereof the following paragraph :—

(a) a company, corporation, society, association or other body incorporated outside the State, not being a corporation sole or a body corporate that is incorporated within the Commonwealth and is a public authority or an instrumentality or agency of the Crown whether in right of the Commonwealth or of a State of the Commonwealth; or

(c) by inserting in the same subsection next after the definition of "Regulations" the following new definition :—

"Related corporation" in relation to a corporation means a corporation that is deemed to be related to the first-mentioned corporation by virtue of subsection (5) of section six.

(d) by inserting next after the definition of "Transparency" in the same section the following new definition :—

"Undischarged bankrupt" means a person who, under a law in force in the Commonwealth or in a Territory of the Commonwealth relating to bankruptcy or insolvency, is a bankrupt in respect of a bankruptcy from which he has not been discharged.

**11. (1) The Principal Act is further amended—**

Further  
amendment  
of Act No.  
71, 1961.

(a)

*Companies (Amendment).***No. 61, 1971****Sec. 4.****(Repeals.)**

(a) (i) by omitting from subsection ten of section four the words "paragraph (b) of subsection (1) of section nine" and by inserting in lieu thereof the words "paragraph (e) of subsection (1) of section one hundred and sixty-five";

(ii) by omitting subsection eleven of the same section;

**Sec. 7.****(Adminis-****tration****of Act.)**

(b) (i) by omitting from subsection six of section seven the word "company" wherever occurring and by inserting in lieu thereof the word "corporation";

(ii) by inserting in the same subsection after the word "complying" the words "or has complied";

(iii) by omitting from subsection eight of the same section the words "in the course of any criminal proceedings" and by inserting in lieu thereof the words "when required so to do in the course of proceedings in a court";

(iv) by inserting next after subsection twelve of the same section the following new subsection :—

(13) Where a fee is payable to the Commission for or in respect of the lodging of a document with the Commission and the document is submitted without payment of the fee, the document shall be deemed not to have been lodged until the fee has been paid to the Commission.

**Sec. 8.****(Companies****Auditors****Board.)**

(c) (i) by omitting from paragraph (a) of subsection one of section eight the word "and";

(ii)

*Companies (Amendment).*

- (ii) by omitting from paragraph (b) of the same No. 61, 1971 subsection the word "prescribed." and by inserting in lieu thereof the words "prescribed; and";
- (iii) by inserting next after the same paragraph the following new paragraph :—
  - (c) to do all such other things as it is required or permitted to do by this Act.
- (iv) by inserting next after subsection two of the same section the following new subsection :—
  - (2A) The member of the Board appointed pursuant to subparagraph (i) of paragraph (d) of subsection (1) of section six of that Act shall be the chairman of an inquiry pursuant to subsection (9) of section nine of this Act.

- (d) by omitting section nine and by inserting in lieu Subst. sec. 9. thereof the following section :—

9. (1) A person who is registered under the Company Public Accountants Registration Act, 1945, as a auditors and public accountant shall, subject to this section, be liquidators. entitled on payment of the prescribed fee to be registered as a company auditor.

(2) The Board may refuse to register as a company auditor a person who is not resident in the State or in another State or in a Territory of the Commonwealth.

(3) A registered public accountant who is in public practice as a public accountant may apply to the Board for registration as a liquidator and the Board, if satisfied as to his experience and capacity, shall on payment of the prescribed fee register the applicant as a liquidator.

(4)

*Companies (Amendment).***No. 61, 1971**

(4) The Board may refuse to register as a liquidator a person who is not resident in the State or in another State or in a Territory of the Commonwealth.

(5) Notwithstanding anything in subsection (3) of this section, a registered public accountant who is not in public practice as a public accountant may apply to the Board for registration as a liquidator in respect of the winding up of a specified corporation, and the Board—

- (a) if satisfied as to his experience and capacity; and
- (b) if satisfied that the nature of the property or business of the corporation, or the interests of the creditors or contributories generally, so requires,

shall, on payment of the prescribed fee, register him as a liquidator in respect of that corporation.

(6) Every registration (including a renewal of the registration) of a company auditor or liquidator shall be in force until the thirty-first day of December next succeeding the day on which the registration was effected.

(7) Subject to subsection (8) of this section, a person who is a registered company auditor or liquidator shall, on payment of the prescribed fee, be entitled to renewal of his registration.

(8) The Board may refuse to renew the registration of a registered company auditor or liquidator if—

- (a) he is not resident in the State or in another State or in a Territory of the Commonwealth; or

(b)

*Companies (Amendment).*

(b) he does not, at least three months before his registration ceases to be in force, apply to the Board for renewal of his registration and pay the prescribed fee.

(9) The Board, after giving notice to a person who is a registered company auditor or a registered liquidator, may inquire into the conduct, character and ability of that person subject to his being given an opportunity of being heard.

(10) For the purposes of an inquiry under subsection (9) of this section the chairman may, by notice in the prescribed form, require any person to appear at the inquiry and give evidence on oath (which the chairman is hereby authorised to administer) as to any matter in relation to the subject matter of the inquiry, and the notice may require the production of all or any books and documents in the custody or under the control of that person.

(11) If, at an inquiry under subsection (9) of this section, a person who is a registered company auditor or a registered liquidator is found to have been guilty of conduct discreditable to a registered company auditor or liquidator, as the case may be, or is found to be incapable of performing the duties of a registered company auditor or liquidator, as the case may be, the Board may cancel his registration and order the removal of his name from the register or may, subject to subsection (12) of this section—

(a) admonish or reprimand him;

(b)

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- (b) require him to pay, within a specified time, the costs of and incidental to the inquiry by the Board;
- (c) require him to give an undertaking to abstain from some specific conduct;
- (d) impose on him a fine not exceeding one-hundred dollars to be paid within a specified time; or
- (e) suspend his registration for a period not exceeding one year.

(12) The fact that the Board has acted under paragraph (a), (b), (c), (d) or (e) of subsection (11) of this section pursuant to a finding under that subsection does not prevent the Board from acting under any other one or more of those paragraphs in respect of the same finding.

(13) Where, following an inquiry under subsection (9) of this section, the Board cancels the registration of an auditor or liquidator, the Board may require him to pay, within a specified time the costs of and incidental to the inquiry, and the Board may find, pursuant to an inquiry under this section—

- (a) that a failure to pay costs required to be paid pursuant to this subsection or paragraph (b) of subsection (11) of this section or a fine imposed pursuant to paragraph (d) of subsection (11) of this section; or
- (b) that a failure to honour an undertaking referred to in paragraph (c) of that subsection,

is conduct discreditable to a registered company auditor or liquidator, whether or not, in a case referred to in paragraph (a) of this subsection, the amount payable has been recovered under subsection (15) of this section.

(14)

*Companies (Amendment).*

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(14) In addition to its other powers under No. 61, 1971 this section the Board may, where it is satisfied in relation to a registered company auditor or liquidator—

- (a) that his registration has been cancelled or suspended and his name removed from the register in any other State or a Territory of the Commonwealth; and
- (b) that either an appeal against the cancellation or suspension has been disallowed, or the time for appealing against the cancellation or suspension has expired without an appeal having been made,

cancel or suspend his registration in the State.

(15) The amount of any costs required to be paid pursuant to subsection (11) or (13), or fine imposed pursuant to paragraph (d), of subsection (11), of this section may be recovered in any court of competent jurisdiction as a debt due to the Crown.

(16) A person aggrieved by a decision of the Board under this section may, within one month from the date of his receiving notice of the decision, appeal to the Court from the decision in accordance with rules of Court and the Court may, on the hearing of the appeal, confirm, vary or reverse the decision and, if it thinks fit, may direct the Board to register a person whom the Board has refused to register.

(17) Subject to subsection (16) of this section, a decision of the Board cancelling, suspending, or refusing to renew, the registration of a company auditor or a liquidator takes effect upon his being notified thereof.

(18)

**No. 61, 1971**

(18) An order made under the Public Accountants Registration Act, 1945, suspending the registration of a public accountant and an order made under that Act directing that the name of a registered public accountant be removed from the register shall have the like effect in relation to any registration of that person as a company auditor or liquidator.

(19) Where the registration of a person has been cancelled under this section that person shall not again be registered as a company auditor or liquidator without the express direction of the Board or of the Court.

(20) A person who is, or is for the time being performing the duties of, Auditor-General of the Commonwealth or of a State or of a Territory of the Commonwealth shall be deemed to be a registered company auditor for the purposes of this or any other Act.

Sec. 12.  
(Registers.)

(e) (i) by omitting from paragraph (a1) of subsection two of section twelve the words "a transparency" and by inserting in lieu thereof the words "inspect a transparency";

(ii) by inserting next after subsection five of the same section the following new subsection :—

(5A) The Commission may require a person who submits a document to the Commission to produce to the Commission such other document, or give to the Commission such information, as the Commission considers necessary in order to form an opinion whether the Commission may refuse to register or receive the document under subsection (5) of this section.

(f)

*Companies (Amendment).*

(f) by omitting subsection three of section fourteen No. 61, 1971 and by inserting in lieu thereof the following subsection :—

Sec. 14.  
(Formation  
of  
companies.)

(3) An association or partnership consisting—

- (a) in the case of an association or partnership formed for the purpose of carrying on the profession or calling of accountancy—of more than one hundred persons;
- (b) in the case of an association or partnership formed for the purpose of carrying on any profession or calling declared by proclamation of the Governor published in the Gazette to be a profession or calling which is not customarily carried on in the Commonwealth by a corporation—of more than fifty persons; or
- (c) in any other case—of more than twenty persons,

which has for its object the acquisition of gain by the association or partnership or individual members thereof shall not be formed unless it is incorporated under this Act or is formed in pursuance of some other Act or letters patent.

(2) The proclamation by the Governor published in the Gazette on the fifteenth day of July, one thousand nine hundred and sixty-six for the purposes of subsection three of section fourteen of the Principal Act, being the proclamation whereby the profession or calling of accountancy was declared to be a profession or calling which is not customarily carried on in the Commonwealth by a corporation ceases to have any force or effect on and after the day on which paragraph (f) of subsection one of this section commences.

(3)

**No. 61, 1971** (3) A proclamation by the Governor (other than the proclamation referred to in subsection two of this section) that—

(a) was published in the Gazette for the purposes of subsection three of section fourteen of the Principal Act; and

(b) was in force immediately before the commencement of paragraph (f) of subsection one of this section,

is hereby continued in force on and after that commencement as if it were a proclamation by the Governor published in the Gazette for the purposes of subsection three of section fourteen of the Principal Act, as amended by that paragraph.

Further  
amendment  
of Act No.  
71, 1961.

Sec. 22.  
(Names of  
companies.)

**12. The Principal Act is further amended—**

(a) (i) by omitting from paragraph (b) of subsection seven of section twenty-two the word “or”;

(ii) by inserting next after the same paragraph the following new paragraph :—

(b1) the name of an intended foreign company which is proposed to be registered; or;

(iii) by omitting from subsection eight of the same section the words “or foreign company” and by inserting in lieu thereof the words “, intended foreign company or foreign company”;

(iv) by omitting from subsection ten of the same section the words “or foreign company” and by inserting in lieu thereof the words “, intended foreign company or foreign company”;

(v)

*Companies (Amendment).*

(v) by omitting from subsection eleven of the same No. 61, 1971 section the words "or foreign company" wherever occurring and by inserting in lieu thereof the words ", intended foreign company or foreign company";

(b) (i) by inserting in subsection one of section Sec. 24. twenty-four after the word "charity," the word "patriotism,";

(Omission  
of "Limited"  
in name of  
charitable  
and other  
companies.)

(ii) by inserting next after subsection three of the same section the following new subsection :—

(3A) Any condition of the memorandum of a company which has received a license under the provision of the repealed Act or any corresponding previous enactment corresponding to this section, being a condition to the effect that no alteration may be made to its memorandum or articles unless the alteration has been approved by the Governor, shall be deemed to have been sufficiently complied with if that approval is given by the Minister.

(iii) by omitting subsection four of the same section and by inserting in lieu thereof the following subsections :—

(4) A company in respect of which a license under this section or under a corresponding previous enactment is in force is exempt from complying with the provisions of this Act relating to the use of the word "Limited" as part of its name.

(4A) The Minister may, in a license under this section, exempt a company from complying with the provisions of this Act, or such of them

**No. 61, 1971**

them as are specified in the license, relating to the lodging of annual returns and of returns of particulars of directors, managers and secretaries.

(4B) Where, immediately before the commencement of subparagraph (iii) of paragraph (b) of section twelve of the Companies (Amendment) Act, 1971, a company in respect of which a license under this section or a corresponding previous enactment was in force was exempt from the provisions of this Act relating to the lodging of annual returns and of returns of particulars of directors, managers and secretaries, the company shall, subject to subsection (4C) of this section, continue to be exempt from those provisions.

(4C) The Minister may by notice served on the company revoke any exemption held by a company or a company included in a class of companies from the provisions of this Act relating to the lodging of annual returns and of returns of particulars of directors, managers and secretaries.

(iv) by inserting at the end of the same section the following new subsection :—

(6) Where a license issued under this section or under a corresponding previous enactment is revoked, a provision of the memorandum of a company that was inserted in compliance with a condition upon which the license was issued may be altered in the same manner as an alteration of the provisions of that memorandum with respect to the objects of the company may be made, and section twenty-eight applies to a proposal for such an alteration accordingly.

*Companies (Amendment).***13. The Principal Act is further amended—****No. 61, 1971**

Further  
amendment  
of Act No.  
71, 1961.

(a) by omitting section twenty-five and by inserting in Subst. sec. 25.

**25. (1) Subject to this section—**

Change of  
status of  
company.

(a) an unlimited company may convert to a limited company if it was not previously a limited company that became an unlimited company pursuant to paragraph (d) of this subsection;

(b) a no-liability company all the issued shares in which are fully paid-up may convert to a company limited by shares;

(c) a company limited by guarantee may convert to a company limited both by shares and guarantee; and

(d) a limited company may convert to an unlimited company if it was not previously an unlimited company that became a limited company pursuant to paragraph (a) of this subsection or any corresponding previous enactment.

(2) Where a company applies in writing to the Commission for a change of status as provided by subsection (1) of this section and, subject to subsections (8) and (9) of section twenty-eight as applied by subsection (7) of this section, lodges with the application the prescribed documents relating to the application, the Commission

shall,

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shall, upon registration of such prescribed documents so lodged as are registrable under this Act, issue to the company a certificate of incorporation—

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

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

(3) Where the status of a company is changed pursuant to this section, notice of the change of status shall be published in such manner (if any) as the Commission directs.

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

- (a) a printed copy of a special resolution of the company—
  - (i) resolving to change the status of the company and specifying the status sought;
  - (ii) making such alterations to the memorandum of the company as are necessary to bring the memorandum into conformity with the requirements of this Act relating to the memorandum of a company of the status sought;
- (iii)

*Companies (Amendment).*

- (iii) making—where the company has No. 61, 1971 registered articles—such alterations and additions to the articles, if any, as are necessary to bring the articles into conformity with the requirements of this Act relating to the articles of a company of the status sought;
- (iv) adopting—where the company has no registered articles—such articles, if any, as are required by this Act to be registered in respect of a company of the status sought or are proposed by the company as the registered articles of the company upon the change in its status; and
- (v) changing the name of the company to a name by which it could be registered if it were a company of the status sought;
- (b) where, by a special resolution referred to in paragraph (a) of this subsection, the memorandum of the company is altered, or the articles of the company are altered or added to, or articles are adopted by the company—a printed copy of the memorandum as altered, the articles as altered or added to, or the articles adopted, as the case may be; and
- (c) in the case of an application by a limited company to convert to an unlimited company—
  - (i) the prescribed form of assent to the application subscribed by or on behalf of all the members of the company; and
  - (ii)

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(ii) a statutory declaration by a director or secretary of the company verifying that the persons by whom or on whose behalf such a form of assent is subscribed constitute the whole membership of the company and, if a member has not subscribed the form himself, that the director or secretary making the declaration has taken all reasonable steps to satisfy himself that each person who subscribed the form was lawfully empowered so to do.

(5) The provisions of subsections (2) to (6), both inclusive, of section twenty-one do not apply to or in relation to an application under this section or to any prescribed documents in relation to the application.

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

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

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

- (a) to create a new legal entity;
- (b) to prejudice or affect the identity of the body corporate constituted by the company or its continuity as a body corporate;

(c)

*Companies (Amendment).*

- (c) to affect the property, or the rights or No. 61, 1971 obligations, of the company; or
- (d) to render defective any legal proceedings by or against the company,

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

- (b) (i) by omitting from paragraph (a) of subsection Sec. 218. one of section two hundred and eighteen the (Liability words "a past" and by inserting in lieu thereof as <sup>as con-</sup> tributaries the words "subject to paragraph (aa) of this of present subsection, a past"; <sup>and past</sup> members.)
- (ii) by inserting next after the same paragraph the following new paragraph :—

  - (aa) where the company is a limited company and became a limited company by virtue of a change of status pursuant to paragraph (a) of subsection (1) of section twenty-five, a past member of the company who was a member thereof at the time of the change of status shall, if the winding up commences within the period of three years after the change of status—
    - (i) be liable notwithstanding paragraph (a) of this subsection to contribute in respect of debts and liabilities contracted before the change of status; and

(ii)

**No. 61, 1971**

- (ii) if no person who was a member of the company at the time of the change of status is a member at the commencement of the winding up, be liable so to contribute, notwithstanding paragraphs (a) and (c) of this subsection and whether or not the existing members have satisfied the contributions required to be made by them in pursuance of this Act;
- (iii) by inserting next after paragraph (e) of the same subsection the following new paragraphs :—
  - (ea) notwithstanding paragraphs (d) and (e) of this subsection, where the company is a limited company and became a limited company by virtue of a change of status pursuant to paragraph (a) of subsection (1) of section twenty-five, the amount that a member of the company at the time of the change of status, or a person who at that time was a past member of the company, is liable to contribute in respect of the debts and liabilities of the company contracted before that time is unlimited;
  - (eb) where a company changes its status pursuant to paragraph (d) of subsection (1) of section twenty-five, a person who, at the time the company applied to the Commission for the change of status was a past member of the company and did not thereafter

again

*Companies (Amendment).*

again become a member of the No. 61, 1971 company shall not, if the company is wound up, be liable to contribute to the assets of the company more than he would have been liable to contribute thereto had the company not changed its status.

(c) by inserting at the end of section three hundred and thirty-one the following new subsection :— Sec. 331.  
(Distribution of surplus where cessation of business within twelve months.)

(2) In subsection (1) of this section “no-liability company” includes a company that, having been incorporated as a no-liability company, changes its status pursuant to section twenty-five.

(d) by inserting at the end of section three hundred and thirty-two the following new subsection :— Sec. 332.  
(As to rights attaching to preference shares issued to promoters.)

(2) In subsection (1) of this section “no-liability company” includes a company that, having been incorporated as a no-liability company, changes its status pursuant to section twenty-five.

**14. The Principal Act is further amended—**

Further amendment of Act No. 71, 1961.

(a) by omitting section forty and by inserting in lieu thereof the following section :—

40. (1) Subject to this section, a person shall not issue, circulate, publish, disseminate or distribute any notice, circular or advertisement that—

(a) offers, for subscription or purchase, shares in, or debentures of, a corporation or invites subscription for, or purchase of, any such shares or debentures; or

(b)

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(b) calls attention to—

- (i) an offer, or intended offer, for subscription or purchase, of shares in, or debentures of, a corporation;
- (ii) an invitation, or intended invitation, to subscribe for or purchase any such shares or debentures; or
- (iii) a prospectus.

(2) This section does not apply to—

- (a) a notice or circular that relates to an offer or invitation not made or issued to the public;
- (b) a registered prospectus;
- (c) a notice, circular or advertisement that calls attention to a registered prospectus, that states that allotments of or contracts with respect to, the shares or debentures referred to in the prospectus will be made only on the basis of one of the forms of application referred to in, and attached to, a copy of the prospectus and that contains no other information or matter other than some or all of the following information:—
  - (i) the number and description of the shares in, or debentures of, the corporation to which the prospectus relates;
  - (ii) the name of that corporation, the date of its incorporation and the amount of its paid-up capital;
  - (iii) the general nature of the main business, or the proposed main business, of the corporation;
  - (iv)

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(iv) the names, addresses and occupations of the directors or proposed directors;

(v) the names and addresses of the brokers or underwriters to the issue and, where the prospectus relates to debentures, the name and address of the trustee for the debenture holders;

(vi) the name of the stock exchange of which the brokers or underwriters to the issue are members;

(vii) particulars of the period during which the offer is effective; or

(viii) particulars of the time and place at which copies of the registered prospectus, and forms of application for the shares or debentures to which it relates, may be obtained; or

## (d) a notice or circular that—

(i) accompanies a notice or circular referred to in paragraph (b) or (c) of this subsection or would, but for the inclusion therein of a statement referred to in subparagraph (iii) or (iv) of this paragraph, be a notice or circular so referred to;

(ii) is issued or circulated by a person whose ordinary business is, or includes, advising clients in connection with their investments and is issued or circulated only to clients so advised in the course of that business;

(iii)

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(iii) contains a statement that the investment to which it or the accompanying document relates is recommended by that person; and

(iv) where that person is an underwriter or sub-underwriter of an issue of shares or debentures to which the notice or circular or accompanying document relates—contains a statement that the person making the recommendation is interested in the success of the issue as underwriter or sub-underwriter, as the case may be.

(3) This section applies to notices, circulars and advertisements published or disseminated in the State by newspaper, radio or television broadcasting, cinematograph or any other means.

(4) A person who contravenes this section, and a person who knowingly authorises or permits an act that constitutes a contravention of this section, is guilty of an offence against this Act.

Penalty : Two thousand dollars.

(5) Where a notice, circular or advertisement relating to a corporation is issued, circulated, published, disseminated or distributed in contravention of this section by, or with the authority or permission of, an officer of the corporation, the corporation is guilty of an offence against this Act.

Penalty : Two thousand dollars.

(6) Where a person issues, circulates, publishes, disseminates or distributes a notice, circular or advertisement in contravention of this

section

*Companies (Amendment).*

section or section 40A and before doing so obtains No. 61, 1971 a certificate that—

- (a) is signed by two directors of the corporation, or two proposed directors of the proposed corporation, to which or to shares in which or debentures of which the notice, circular or advertisement relates;
- (b) specifies the names of those directors and of that corporation or of those proposed directors of that proposed corporation; and
- (c) is to the effect that, by the operation of subsection (2), this section does not apply to the notice, circular or advertisement,

each person who signed the certificate shall be deemed to have issued, circulated, published, disseminated or distributed the notice, circular or advertisement and the person who obtained the certificate shall be deemed not to have done so.

(7) A person who has obtained a certificate referred to in subsection (6) of this section shall, if the Commission requires him so to do, forthwith deliver the certificate to the Commission.

Penalty : One thousand dollars. Default penalty.

(8) In proceedings for an offence under subsection (4) or (5) of this section or subsection (3) or (4) of section 40A, a certificate that purports to be a certificate under subsection (6) of this section is *prima facie* evidence—

- (a) that, at the time the certificate was given, the persons named as such in the certificate were directors of the corporation so named or proposed directors of the proposed corporation so named, as the case may be;
- (b) that the signatures in the certificate purporting to be the signatures of those persons are their signatures; and

(c)

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(c) that publication of the notice, circular or advertisement to which the certificate relates was authorised by those persons.

(9) Nothing in this section limits or diminishes any liability that a person may, apart from this section, incur under any rule of law or under any enactment including this Act.

New sec.  
40A.

(b) by inserting next after the same section the following new section :—

Certain  
publicity  
prohibited.

40A. (1) Subject to this section, where a person is aware that a prospectus in respect of an issue of shares or debentures—

(a) is in course of preparation by or on behalf of a corporation, or in respect of a proposed corporation, for registration in a State or in a Territory of the Commonwealth; or

(b) has been issued by or on behalf of a corporation or in respect of a proposed corporation and is current,

that person shall not issue, circulate, publish, disseminate or distribute any written material (other than a copy of a registered prospectus or a circular, notice or advertisement to which section forty does not apply) or any material that is broadcast by radio or television, where that written or other material may reasonably be expected to induce the making of applications for those shares or debentures.

(2)

*Companies (Amendment).*

(2) Subsection (1) of this section does not apply to the issue, circulation, publication, dissemination or distribution of—

- (a) bona fide comment in a newspaper or periodical on a prospectus registered in a State or in a Territory of the Commonwealth, where no consideration or other benefit in respect thereof is received or receivable by the author of the comment or by the owner or publisher of the newspaper or periodical from any person who has an interest in the success of the issue of shares or debentures to which the comment relates;
- (b) an announcement that is made, with the consent in writing of the Commission, on behalf of a corporation or by or on behalf of the proposed directors of a proposed corporation;
- (c) a statement, relating to the affairs of a corporation listed on a prescribed stock exchange, made to that stock exchange, or an officer thereof, on behalf of the corporation or by or on behalf of its directors;
- (d) material that is not issued, circulated, published, disseminated or distributed—
  - (i) by or on behalf of the corporation to which the material relates;
  - (ii) at the instigation of, or by arrangement (direct or indirect) with, the corporation to which the material relates or its directors or the promoters or proposed directors of the proposed corporation to which the material relates; or

(iii)

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(iii) by a person who has an interest in the success of the issue of shares or debentures to which the material relates,

where no consideration or other benefit is received or receivable from a person referred to in subparagraph (i), (ii) or (iii) of this paragraph by the person who issues, circulates, publishes, disseminates or distributes the material; or

(e) written material, or material that is broadcast by radio or television, being material that is—

- (i) material prescribed for the purposes of this paragraph or material of a class so prescribed; or
- (ii) material relating to a corporation prescribed for the purposes of this paragraph or a corporation of a class so prescribed.

(3) A person who contravenes this section, and a person who knowingly authorises or permits an act that constitutes a contravention of this section, is guilty of an offence against this Act.

Penalty : Two thousand dollars.

(4) Where this section is contravened by, or with the authority or permission of, an officer of a corporation and that corporation is the corporation in respect of the shares in which or debentures of which the contravention arose, the corporation is guilty of an offence against this Act.

Penalty : Two thousand dollars.

(c)

*Companies (Amendment).*

(c) (i) by omitting from paragraph (c) of subsection No. 61, 1971 five of section fifty-four the words "or where Sec. 54.  
an account or reserve has been applied directly (Return  
in paying up shares already issued" and by as to allot-  
inserting in lieu thereof the words "or in ments.)  
pursuance of the application of moneys held  
by the company in an account or reserve in  
paying up or partly paying up unissued shares  
to which the shareholders have become  
entitled";

(ii) by omitting from subsection seven of the same section the words "issued without formal allotment to subscribers to the memorandum" and by inserting in lieu thereof the words "which the subscribers to the memorandum have agreed in the memorandum to take";

(d) by omitting paragraph (c) of subsection one of section sixty-two and by inserting in lieu thereof Sec. 62.  
the following paragraph :—  
(Power of  
company to  
alter its  
share  
capital.)

(c) convert, or make provision for the conversion of, all or any of its paid-up shares into stock and re-convert, or make provision for the re-conversion of, that stock into paid-up shares of any denomination;

(e) by inserting at the end of section sixty-four the Sec. 64.  
following new subsections :—  
(Special  
resolution  
for reduc-  
tion of  
share  
capital.)

(12) A grant made before the commencement of paragraph (e) of section fourteen of the Companies (Amendment) Act, 1971, by a company to a member of the company of the right to occupy or use any land, building or part of a building owned or held under lease by the company, whether for consideration or not and whether by virtue of his being a member of the company or not, shall be deemed not to have been a reduction of the share capital of the company.

(13)

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(13) A grant made after that commencement by a company to a member of the company of a right referred to in subsection (12) of this section shall not constitute a reduction of the share capital of the company if it is made in pursuance of a provision of the memorandum or articles of the company under which a member of the company by virtue of his being such a member, may be granted such a right whether or not the provision provides for consideration to be given for the grant.

(14) Where land under the provisions of the Real Property Act, 1900, is comprised in a strata plan registered under the Conveyancing (Strata Titles) Act, 1961, and at the time of registration of the strata plan the registered proprietor of that land was a company, the transfer by the company of any lot in that strata plan in exchange for or in satisfaction of a right of a kind referred to in subsection (12) or (13) of this section shall not of itself constitute, and shall be deemed never to have constituted, a reduction of the share capital of the company.

Sec. 76.  
(Interpre-  
tation.)

(f) by omitting paragraph (f) of the definition of "Interest" in subsection one of section seventy-six and by inserting in lieu thereof the following paragraph :—

(f) an interest in a partnership agreement, unless the agreement or proposed agreement—

(i) relates to an undertaking, scheme, enterprise or investment contract promoted by or on behalf of a person whose ordinary business is or includes the promotion of similar

undertakings,

*Companies (Amendment).*

undertakings, schemes, enterprises No. 61, 1971 or investment contracts, whether or not that person is, or is to become, a party to the agreement or proposed agreement; or

(ii) is or would be an agreement, or is or would be within a class of agreements, prescribed by the regulations for the purposes of this paragraph.

(g) by omitting from paragraph (d) of subsection one Sec. 80. of section eighty the figure and symbols "(5)" (Covenants where firstly occurring and by inserting in lieu <sup>to be</sup> included in thereof the figure and symbols "(7)"; <sup>deeds.</sup>)

(h) by inserting at the end of section eighty-one the Sec. 81. following new subsection :—

(2) Subsection (1) of this section does not companies apply to or in relation to an offer to the public for purchase of an interest that—

(a) is an interest in a partnership agreement;

and

(b) was subscribed for or purchased before the commencement of paragraph (f) of section fourteen of the Companies (Amendment) Act, 1971.

(i) by omitting from subsection one of section eighty- Sec. 82. two the words "as if the interest were shares offered (Statement or intended to be offered to the public for subscrip- to be issued.) tion or purchase and as if persons accepting any

offer

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offer or invitation in respect of or subscribing for or purchasing any such interest were subscribers for shares." and by inserting in lieu thereof the following words :—

and, without limiting the generality of the foregoing, apply and have effect as if—

- (i) the interest were shares offered or intended to be offered to the public for subscription or purchase;
- (ii) persons accepting any offer or invitation in respect of or subscribing for or purchasing any such interest were subscribers for shares;
- (iii) a reference in paragraph (c) of subsection (2) of section forty to "the corporation" were a reference to the financial or business undertaking or scheme, the common enterprise or the investment contract to which the statement relates;
- (iv) the reference in subparagraph (iv) of that paragraph to "the directors or proposed directors" were a reference to the management company for the interest and the directors thereof; and
- (v) in subparagraph (v) of that paragraph a reference to "debentures" were a reference to an interest and a reference to "the trustee for the debenture holders" were a reference to the trustee for, or representative of, the holders of the interests.

(i)

*Companies (Amendment).*

(j) by inserting in subsection one of section eighty-three **No. 61, 1971**  
 after the word "interest" where firstly occurring the  
 words "(not being an interest referred to in sub-  
 section (2) of section eighty-one)";  
 Sec. 83.  
 (No issue  
 without  
 approved  
 deed.)

(k) (i) by inserting next after subsection one of section **Sec. 84.**  
 eighty-four the following new subsections :— (Register  
 of interest  
 holders.)

(1A) A management company incor-  
 porated in a proclaimed State or Territory of  
 the Commonwealth which—

(a) keeps a register of holders of interests  
 in accordance with the law of the pro-  
 claimed State or Territory, being a  
 law that corresponds with the preced-  
 ing provisions of this section ; and

(b) keeps within the State a register con-  
 taining, with respect to the holders of  
 interests who are resident within the  
 State, the information prescribed by  
 subsection (1) of this section,

shall be deemed to comply with subsection (1)  
 of this section.

(1B) A management company that is to be  
 deemed by subsection (1A) of this section to  
 comply with subsection (1) of this section  
 shall, within fourteen days after receiving a  
 written request from a holder of an interest  
 resident in the State, make available for inspec-  
 tion by him a copy of the register of holders of  
 interests kept under the law of the proclaimed  
 State or Territory.

Penalty : Two hundred dollars. Default  
 penalty.

(ii)

**No 61, 1971**

(ii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsection :—

(2) The provisions of Division 4 of Part V (section one hundred and fifty-seven excepted) shall, with such adaptations and modifications as are necessary, apply to and in relation to the registers kept under subsection (1), and under paragraph (b) of subsection (1A), of this section.

(iii) by inserting in paragraph (a) of subsection three of the same section after the word "interests" the words "pursuant to subsection (1), or paragraph (b) of subsection (1A), of this section";

**Sec. 85.**  
(Returns,  
information,  
etc. relating  
to interests.)

(l) (i) by inserting in subsection one of section eighty-five after the word "deed" where sixthly occurring the words "a return in the prescribed form containing";  
(ii) by omitting from paragraph (a) of the same subsection the words "a return containing";

**Sec. 95.**  
(Instrument  
of transfer.)

(m) (i) by inserting in subsection one of section ninety-five after the word "articles" the words "or in a deed relating to debentures or interests";  
(ii) by omitting from the same subsection the words "shares or debentures" and by inserting in lieu thereof the words "shares, debentures or interests";  
(iii) by omitting from the same subsection the words "shareholder or debenture holder" and by inserting in lieu thereof the words "shareholder, debenture holder or interest holder";

(iv)

*Companies (Amendment).*


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- (iv) by omitting from the same subsection the **No. 61, 1971** words "shares in or debentures of" and by inserting in lieu thereof the words "shares in, debentures of, or interests made available by,";
- (v) by omitting subsection two of the same section and by inserting in lieu thereof the following subsection :—
  - (2) A transfer of shares, debentures or interests of a deceased holder made by his personal representative shall, although the personal representative is not himself registered as the holder of those shares, debentures or interests, be as valid as if he had been so registered at the time of the execution of the instrument of transfer.
- (vi) by omitting from subsection three of the same section the word "inmember" wherever occurring and by inserting in lieu thereof the word "holder";
- (vii) by omitting from the same subsection the words "or debenture" wherever occurring and by inserting in lieu thereof the words ", debenture or interest";
- (viii) by omitting from the same subsection the words "an affidavit" where firstly occurring and by inserting in lieu thereof the words "a statutory declaration";
- (ix) by omitting from the same subsection the words "an affidavit sworn" and by inserting in lieu thereof the words "a statutory declaration made";
- (x) by omitting from the same subsection the words "fourteen days" and by inserting in lieu thereof the words "one month";
- (xi) by omitting from the same subsection the words "the affidavit" and by inserting in lieu thereof the words "the statutory declaration";
- (xii)

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- (xii) by omitting from subsection four of the same section the word "member" and by inserting in lieu thereof the word "holder";
- (xiii) by inserting next after the same subsection the following new subsection :—
  - (4A) For the purposes of this section, an application by a personal representative of a deceased person for registration as the holder of a share, debenture or interest in place of the deceased person shall be deemed to be an instrument of transfer effecting a transfer of the share, debenture or interest to the personal representative.
- (xiv) by inserting in subsection five of the same section after the word "articles" the words "or in a deed relating to debentures or interests";
- (xv) by inserting next after the same subsection the following new subsection :—
  - (6) In this section "interest" includes an interest within the meaning of Division 5 of this Part.

**Sec. 96.**  
(Registrations of transfer at request of transferor.)

- (n) (i) by omitting from subsection one of section ninety-six the words "share debenture or other interest in" and by inserting in lieu thereof the words "share in, debenture of, or interest made available by,";
- (ii) by omitting from subsection two of the same section the words "share or debenture" and by inserting in lieu thereof the words "share in, debenture of, or interest made available by, the company,";
- (iii) by inserting in the same subsection after the word "debenture" where secondly occurring the words "or any document evidencing title to the interest (as the case may be)";
- (iv)

*Companies (Amendment).*

- (iv) by omitting from the same subsection the words "or debenture" where thirdly occurring and by inserting in lieu thereof the words "debenture or document";
- (v) by omitting from subsection five of the same section the words "or debentures" and by inserting in lieu thereof the words "debentures and other documents";
- (vi) by inserting next after the same subsection the following new subsection :—

(6) In this section "interest" includes an interest within the meaning of Division 5 of this Part.

- (o) (i) by omitting from section ninety-seven the words "shares, debentures or other interests in" and by inserting in lieu thereof the words "shares in, debentures of, or interests made available by,";
- (ii) by inserting next after the same subsection the following new subsection :—

(1A) In this section "interest" includes an interest within the meaning of Division 5 of this Part.

- (p) (i) by omitting from subsection one of section ninety-eight the words "shares, debentures or other interests in" where firstly occurring and by inserting in lieu thereof the words "shares in, debentures of, or interests made available by,";
- (ii) by omitting from the same section the word "other" where secondly, thirdly and fourthly occurring;

(iii)

No. 61, 1971

Sec. 99.  
(Duties of  
company  
with respect  
to issue of  
certifi-  
cates.)

(iii) by inserting next after subsection four of the same section the following new subsection :—

(5) In this section “interest” includes an interest within the meaning of Division 5 of this Part.

(q) (i) by omitting from subsection one of section ninety-nine the words “any of its shares or debentures,” where firstly occurring and by inserting in lieu thereof the words “any shares in, the issue of debentures of, or the making available of interests by, the company”;

(ii) by omitting from the same subsection the words “any of its shares or debentures” where secondly occurring and by inserting in lieu thereof the words “any shares, debentures or interests”;

(iii) by omitting from the same subsection the words “certificates and debentures” and by inserting in lieu thereof the words “certificates, debentures or other documents”;

(iv) by inserting in the same subsection after the word “allotment” the words “, issue, making available”;

(v) by inserting in the same subsection after the word “provide” the words “and shall, unless otherwise instructed by the transferee, send or deliver the completed certificates, debentures or other documents to the transferee or, where the transferee has instructed the company in writing to send them to a nominated person, to that person”;

(vi) by inserting in subsection two of the same section after the word “Act” the words “and liable, for each day during which the offence continues, to a penalty not exceeding one hundred dollars”;

(vii)

*Companies (Amendment).*

(vii) by omitting from the same subsection the words "Penalty : One hundred dollars. Default penalty.";

(viii) by omitting from subsection three of the same section the words "or the debentures" and by inserting in lieu thereof the words ", debentures or other documents";

(ix) by inserting next after subsection four of the same section the following new subsection :—

(5) In this section "interest" includes an interest within the meaning of Division 5 of this Act.

(r) (i) by omitting from subsection one of section one Sec. 100. hundred the words "an affidavit" and by inserting (Registration in lieu thereof the words "a statutory charges.) declaration";

(ii) by omitting from subsection four of the same section the word "affidavit" and by inserting in lieu thereof the words "statutory declaration";

(iii) by omitting from subsection five of the same section the word "are" where secondly occurring and by inserting in lieu thereof the word "is";

(iv) by omitting from the same subsection the words "an affidavit" wherever occurring and by inserting in lieu thereof the words "a statutory declaration";

(s) by omitting from subsection one of section one Sec. 102. hundred and two the words "an affidavit" and by inserting in lieu thereof the words "a statutory company to declare".

15. (Duty of register charges existing on property acquired.)

**No. 61, 1971****15. The Principal Act is further amended—**

Further  
amendment  
of Act No.  
71, 1961.

Sec. 111.  
(Registered  
office of  
company.)

(a) by omitting from subsection one of section one hundred and eleven the words "on which it begins to carry on business or as from the fourteenth day after the date of its incorporation, whichever is the earlier," and by inserting in lieu thereof the words "of its incorporation";

Sec. 112.  
(Office  
hours.)

(b) by omitting subsection one of section one hundred and twelve and by inserting in lieu thereof the following subsections :—

(1) On the lodging of the memorandum of a proposed company for registration, notice in the prescribed form of the address of the proposed registered office of the company, and of the days and hours during which it is to be open and accessible to the public shall also be lodged with the Commission but no notice of the days and hours during which the office is to be open and accessible to the public shall be required if the office is to be open for at least five hours between ten o'clock in the morning and four o'clock in the afternoon of each day, Saturdays, Sundays and holidays excepted.

(1A) Notice in the prescribed form of any proposed change of address of the registered office of the company or of the days and hours during which it is open and accessible to the public (other than the days and hours in respect of which no notice under subsection (1) of this section is required) shall be lodged with the Commission on or forthwith after the date of the change.

Sec. 114.  
(Directors.)

(c) (i) by omitting from subsection one of section one hundred and fourteen the words "one director" and by inserting in lieu thereof the words "two directors";

(ii)

*Companies (Amendment).*

(ii) by omitting subsection three of the same No. 61, 1971 section and by inserting in lieu thereof the following subsections :—

(3) Where the articles of a company incorporated before the commencement of paragraph (c) of section fifteen of the Companies (Amendment) Act, 1971, provide for the appointment of one director only, the articles shall, after that commencement, be deemed to provide for the appointment of two directors.

(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 against this Act.

Penalty : Two hundred dollars. Default penalty.

(d) by omitting from subsection two of section one Sec. 117. hundred and seventeen the words “and on the (Undis-  
Official Receiver under any law of the Common- charged  
wealth relating to bankruptcy, and the Commission bankrupts  
and the Official Receiver or either of them” and by acting as  
inserting in lieu thereof the word “which”;

(e) (i) by inserting in subsection one of section one Sec. 121. hundred and twenty-one after the word (Age limit  
“appointed” the words “or act as”; for  
directors.)

(ii) by inserting in subsection three of the same section after the word “discovered” the words “that he was of or over the age of seventy-two years at the time of his appointment or”;

(iii) by inserting in subsection six of the same section after the word “resolution” the words “reciting the age of that person being a resolution”;

(iv)

No. 61, 1971

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- (iv) by inserting in the same subsection after the words "until the" wherever occurring the words "conclusion of the";
- (v) by inserting in the same subsection after the word "company" where last occurring the words "but where the company is a subsidiary of a public company, the appointment, re-appointment or authorisation pursuant to this subsection shall not have effect unless either the person so appointed, re-appointed or authorised is a director of the holding company or the appointment or re-appointment of, or authorisation relating to, the person as a director of the company has been approved by a similar resolution of the holding company";
- (vi) by inserting next after the same subsection the following new subsections :—
  - (6A) Notwithstanding anything in this section, where the articles of a company limited by guarantee provide for the holding of postal ballots for the election of directors and a postal ballot for the election of a director or directors is held in which—
    - (a) the members entitled to vote have been given notice in writing by the company stating that a candidate is of or over the age of seventy-two years and reciting the age of the candidate; and
    - (b) that candidate is elected by a majority of not less than three-fourths of the members who, being entitled to vote, vote in the ballot,
  - that candidate may be appointed or re-appointed as a director to hold office until the conclusion of the next annual general meeting of the company.

(6B)

*Companies (Amendment).*

(6B) Notwithstanding anything in this No. 61, 1971 section, where the articles of a company limited by guarantee provide for the election or appointment of directors otherwise than by members at a general meeting or by postal ballot of members and the Commission, by order in writing, declares that this section does not apply to the company or its directors, the section shall not, subject to any conditions that the Commission specifies in the order, so apply.

(6C) A vacancy in the office of a director occurring by virtue of subsection (2) of this section shall not be taken into account in determining when other directors are to retire.

(f) by omitting paragraphs (c) and (d) of subsection Sec. 122. one of section one hundred and twenty-two and by (Power to inserting in lieu thereof the following word and restrain certain persons from managing companies.) paragraph :—

or

(c) of any offence under section forty-seven, one hundred and twenty-four, 180J, 374B or 374C or any of the corresponding provisions of the law of another State or of a Territory of the Commonwealth or under section 75A of the Securities Industry Act, 1970, or any such corresponding provision,;

(g) (i) by omitting from subsection four of section Sec. 123. one hundred and twenty-three the word (Disclosure of interests "company" where secondly and thirdly occurring and by inserting in lieu thereof the word property, "corporation"; offices, &c.)

(ii) by omitting from the same subsection the words "in relation to any contract so made, but no such notice shall be of effect unless either it is given at a meeting of the directors or the director takes reasonable steps to ensure that it is brought up and read at the next

meeting

**No. 61, 1971**

meeting of the directors after it is given" and by inserting in lieu thereof the following words :—

in relation to any contract so made or proposed to be made if—

- (a) the notice states the nature and extent of the interest of the director in the corporation or firm;
- (b) when the question of confirming or entering into the contract is first taken into consideration, the extent of his interest in the corporation or firm is not greater than is stated in the notice; and
- (c) the notice is given at a meeting of the directors or the director takes reasonable steps to ensure that it is brought up and read at the next meeting of the directors after it is given.

Further  
amendment  
of Act No.  
71, 1961.

Sec. 124.  
(As to the  
duty and  
liability  
of officers.)

**16. The Principal Act is further amended—**

- (a) by omitting subsection two of section one hundred and twenty-four and by inserting in lieu thereof the following subsection :—
  - (2) An officer of a corporation shall not make improper use of information acquired by virtue of his position as such an officer to gain directly or indirectly an advantage for himself or for any other person or to cause detriment to the corporation.

(b)

*Companies (Amendment).*

(b) by omitting subsection three of the same section No. 61, 1971 and by inserting in lieu thereof the following subsection :—

(3) An officer of a corporation who commits a breach of a provision of this section is—

(a) liable to the corporation for—

(i) profit made by him; and

(ii) damage suffered by the corporation as a result of the breach; and

(b) guilty of an offence against this Act.

Penalty : Two thousand dollars.

(c) by omitting from subsection four of the same section the word “is” where firstly occurring and by inserting in lieu thereof the words “has effect”;

(d) by omitting from the same subsection the words “directors or officers of a company” and by inserting in lieu thereof the words “a director or officer of a corporation”;

(e) by omitting from the same subsection the word “company” where secondly occurring and by inserting in lieu thereof the word “corporation”.

## 17. The Principal Act is further amended—

Further  
amendment  
of Act No.  
71, 1961.

(a) (i) by omitting subsection two of section one hundred and thirty-two; Sec. 132.  
(Secretary.)

(ii) by omitting from subsection three of the same section the words “The secretary shall be appointed by the directors and” and by inserting in lieu thereof the words “The secretary or secretaries shall be appointed by the directors and a secretary who ordinarily resides in the State”;

(iii)

**No. 61, 1971**

**Sec. 134.**  
(Register of  
directors,  
managers  
and  
secretaries.)

(iii) by omitting subsection six of the same section and by inserting in lieu thereof the following subsection :—

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

Penalty : One hundred dollars. Default penalty.

(b) (i) by omitting paragraph (c) of subsection two of section one hundred and thirty-four and by inserting in lieu thereof the following paragraph :—

(c) particulars of directorships held by the director in other corporations that under the law of the State or any other State or of a Territory of the Commonwealth are public companies or subsidiaries of public companies, but it shall not be necessary for the register to contain particulars of directorships held by a director of a corporation in a related corporation.

(ii) by inserting in subsection four of the same section after the words "(if any)" the words "and shall contain his consent in writing to his appointment as manager or secretary, as the case may be";

(iii) by inserting in subsection nine of the same section after the word "section" the words "or a corresponding provision of the repealed Act or any corresponding previous enactment";

(c) by inserting in subsection one of section one hundred and thirty-seven, after the word "meetings" where secondly occurring the words "or, in either case, of not less than two hundred members who have deposited or tendered with the requisition a sum

**Sec. 137.**  
(Convening  
of extra-  
ordinary  
general  
meeting on  
requisition.)

*Companies (Amendment).*

sum sufficient to meet the cost of posting by No. 61, 1971 ordinary mail the notices to shareholders convening the meeting";

- (d) (i) by omitting from subsection two of section Sec. 138. one hundred and thirty-eight the word "seven" (Calling of meetings.) and by inserting in lieu thereof the word "fourteen";
- (ii) by omitting from paragraph (b) of subsection three of the same section the word "representing" and by inserting in lieu thereof the word "represents";
- (iii) by omitting from the same paragraph the words "at that meeting of all the members" and by inserting in lieu thereof the words "of all the members having the right to attend and vote at the meeting";
- (e) (i) by omitting from section one hundred and Sec. 140. forty the word "corporation" wherever occur (Quorum, chairman, ring and by inserting in lieu thereof the words voting, &c., "body corporate"; at meetings.)
- (ii) by omitting from subsection six of the same section the words "the articles" and by inserting in lieu thereof the words "the memorandum or articles";
- (f) (i) by omitting from subsection one of section one Sec. 141. hundred and forty-one the words "appoint (Proxies.) another person (whether a member or not) as his proxy" and by inserting in lieu thereof the following words :—  
    appoint—  
        (a) in the case of a company not having a share capital— another member or, where the articles so provide, another person (whether a member or not); or  
        (b)

**No. 61, 1971**

(b) in any other case—not more than two other persons (whether members or not),

as his proxy or proxies;

(ii) by inserting next after the same subsection the following new subsection :—

(1A) Where a member appoints two proxies, the appointment shall be of no effect unless each proxy is appointed to represent a specified proportion of the member's voting rights.

(iii) by omitting subsection three of the same section and by inserting in lieu thereof the following subsection :—

(3) In every notice calling a meeting of a public company or of any class of members of a public company, there shall appear with reasonable prominence—

(a) in the case of a public company having a share capital, a statement—

(i) that a member entitled to attend and vote is entitled to appoint not more than two proxies;

(ii) that, where more than one proxy is appointed, each proxy must be appointed to represent a specified proportion of the member's voting rights; and

(iii) that a proxy need not be a member; or

(b)

*Companies (Amendment).*

(b) in the case of a public company No. 61, 1971 not having a share capital, a statement—

- (i) that a member entitled to attend and vote is entitled to appoint a proxy to attend and vote instead of the member; and
- (ii) that a proxy must, or need not be, a member (as the case requires),

and if default is made in complying with this subsection as respects any meeting, every officer of the company who is in default shall be guilty of an offence against this Act.

(g) by inserting in subsection four of section one Sec. 156, hundred and fifty-six after the word "register" the (Limitation of liability of trustee, &c., registered as owner of shares.) words "or branch register kept in the State".

**18. The Principal Act is further amended—**

Further amendment of Act No. 71, 1961.

- (a) (i) by omitting from subsection two of section one hundred and ninety-four the words "The statement" and by inserting in lieu thereof the words "Except to the extent that the Court otherwise directs, the statement"; (Sec. 194. (Special provisions as to statement submitted to receiver.))
- (ii) by omitting from the same subsection the word "affidavit" and by inserting in lieu thereof the words "statutory declaration";
- (iii) by omitting from subsection three of the same section the word "affidavit" wherever occurring and by inserting in lieu thereof the words "statutory declaration";

(b)

**No. 61, 1971****Sec. 195.**  
(Lodging  
of  
accounts  
of  
receivers  
and  
managers.)**Sec. 196.**  
(Payments  
of certain  
debts out  
of assets  
subject to  
floating  
charge in  
priority  
to claims  
under  
charge.)

(b) (i) by omitting from paragraph (a) of subsection one of section one hundred and ninety-five the words "a detailed" and by inserting in lieu thereof the word "an";

(ii) by omitting from paragraph (b) of the same subsection the word "affidavit" and by inserting in lieu thereof the words "statutory declaration";

(c) by omitting from subsection one of section one hundred and ninety-six the words "debts which in every winding up are preferential debts and are due by way of wages salary annual leave or long service leave and any amount which in a winding up is payable in pursuance of subsection (3) or subsection (5) of section two hundred and ninety-two" and by inserting in lieu thereof the words "any debt or amount which in a winding up is payable in priority to other unsecured debts pursuant to paragraph (b) or paragraph (d) of subsection (1), subsection (3) or subsection (5) of section two hundred and ninety-two";

(d) by omitting subsection two of the same section and by inserting in lieu thereof the following subsection :—

(2) For the purposes of this section—

(a) "floating charge" includes a floating charge within the meaning of section two hundred and ninety-two; and

(b) the periods of time mentioned in section two hundred and ninety-two shall be reckoned from the date of the appointment of the receiver or of possession being taken, as the case may be.

(e)

*Companies (Amendment).*

(e) by inserting at the end of the same section the No. 61, 1971 following new subsection :—

(4) This section binds the Crown.

**19.** The Principal Act is further amended—

Further  
amendment  
of Act No.  
71, 1961.

(a) (i) by omitting from subsection one of section Sec. 212. two hundred and twelve the words “the (Release of appointment of a person as official manager of a company is determined under this Part he shall notwithstanding that his appointment has been so determined” and by inserting in lieu thereof the words “a person ceases to be the official manager of a company he shall, notwithstanding that he has so ceased to be the official manager”;

(ii) by omitting from subsection two of the same section the words “the determination of his appointment as” and by inserting in lieu thereof the words “his ceasing to be”;

(iii) by omitting subsection six of the same section and by inserting in lieu thereof the following subsection :—

(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 deemed to be part of the costs of the official management and deemed to have been incurred during the period of the official management.

(iv)

No. 61, 1971

- (iv) by omitting from subsection ten of the same section the words "the determination of his appointment" and by inserting in lieu thereof the words "his ceasing to be official manager";
- (v) by inserting in the same subsection after the words "official management" the words "and deemed to have been incurred during the period of the official management";
- (vi) by inserting next after the same subsection the following new subsection :—
  - (11) Where the Court grants an application under subsection (10) of this section, the person who was the official manager shall, within the time prescribed by the regulations, lodge with the Commission an office copy of the order.

Penalty : One hundred dollars. Default penalty.

**Sec. 214.**  
(Functions  
of committee  
of manage-  
ment and  
appointment  
of deputy  
official  
manager.)

- (b) by omitting subsection three of section two hundred and fourteen and by inserting in lieu thereof the following subsections :—

(3) A person who is appointed deputy official manager of a company shall within fourteen days thereafter lodge with the Commission a notice in the prescribed form of his appointment as deputy official manager and of the situation of his office; and in the event of any change in the situation of his office he shall, within fourteen days thereof, lodge with the Commission notice thereof in the prescribed form.

Penalty : One hundred dollars. Default penalty.

(3A) A person who ceases to be deputy official manager shall within fourteen days of his so ceasing to be deputy official manager, lodge with the Commission notice thereof in the prescribed form.

Penalty : One hundred dollars. Default penalty.

**20. (1) The Principal Act is further amended—****No. 61, 1971**Further  
amendment  
of Act No.  
71, 1961.

- (a) by omitting section ten; Sec. 10.  
(Disqualification of liquidators.)
- (b) by omitting section eleven; Sec. 11.  
(Official liquidators.)
- (c) by inserting next after subsection three of section two hundred and twenty-five the following new subsection :—  
  - (3A) Notwithstanding any rule of law to the contrary, the Court shall not refuse to make an order for winding up on the application of a person under paragraph (c) of subsection (1) of section two hundred and twenty-one on the ground that if the order were made, no assets of the company would be available for distribution among the contributors.
- (d) by inserting at the end of section two hundred and twenty-seven the following new subsection :—  
  - (2) Notwithstanding anything to the contrary in subsection (1) of this section, the Court may, where proceedings for winding up have been commenced but a winding up order has not been made, by order—  
    - (a) validate the making after the commencement of the proceedings of any disposition of property of the company; or
    - (b) permit the business of the company or any portion of the business of the company to be carried on and such acts as are incidental to the carrying on of the business or portion of the business to be done during the time before a winding up order (if any) is made, on such terms as it thinks fit.

(e)

*Companies (Amendment).***No. 61, 1971**Subst. sec.  
231.Official  
liquidators.

(e) by omitting section two hundred and thirty-one and by inserting in lieu thereof the following section :—

231. (1) For the purpose of conducting proceedings in winding up companies and assisting the Court therein, the Commission may from time to time appoint as many registered liquidators as the Commission thinks fit to be official liquidators and may require of each of them such security for the due fulfilment of his duties as an official liquidator as is prescribed, and may revoke any appointment so made.

(2) Where the security prescribed under subsection (1) of this section is a bond to Her Majesty and her successors with or without sureties, the Court may, on application and on being satisfied that a condition of the bond has been broken, make orders for the assignment of the bond to a person named in the order.

(3) A person to whom a bond is assigned under subsection (2) of this section, his executors or administrators, shall upon the assignment be entitled to sue upon the bond in his or their own name or names as if the bond had in the first instance been given to him or them and shall be entitled to receive thereon as trustee for all persons interested the full amount recoverable in respect of any breach of the condition of the bond.

(f) by inserting next after the same section the following new section :—

Appointment  
of liquidator  
of company.

231A. (1) On an order being made for the winding up of a company, the Court may appoint an official liquidator to be liquidator of the company.

(2)

*Companies (Amendment).*

(2) The Court may appoint an official No. 61, 1971 liquidator provisionally at any time after the commencement of proceedings for winding up and before the making of a winding up order or, where there is an appeal against a winding up order, before a decision in the appeal is made, and the provisional liquidator shall have and may exercise such functions and powers as may be prescribed by the rules or as the Court may specify in the order appointing him.

(g) by omitting subsection two of section two hundred and thirty-four and by inserting in lieu thereof the following subsection :—

(2) Except to the extent that the Court otherwise directs, the statement shall be submitted by, and verified by statutory declaration of, such one or more persons belonging to one or more of the following classes as the liquidator requires—

- (a) persons who were at the date of the winding up order the directors and secretary of the company;
- (b) persons who are or who have been officers of the company;
- (c) persons who have taken part in the formation of the company at any time within one year before the date of the winding up order;
- (d) persons who are in the employment of the company, or have been in the employment of the company within that year, and are in the opinion of the liquidator capable of giving the information required;

(e)

**No. 61, 1971****Sec. 249.**  
(Power to summon persons connected with company.)**Sec. 254.**  
(Circumstances in which company may be wound up voluntarily.)**Sec. 259.**  
(Duty of liquidator to call creditors' meeting in case of insolvency.)**Sec. 269.**  
(Powers and duties of liquidator.)

(e) persons who are or have been within that year officers of or in the employment of a corporation which is, or within that year was, an officer of the company to which the statement relates.

(h) by inserting in subsection six of section two hundred and forty-nine after the word "expenses" the words "fails or";

(i) by omitting from paragraph (b) of subsection two of section two hundred and fifty-four the word "ten" and by inserting in lieu thereof the word "fourteen";

(j) (i) by omitting from subsection four of section two hundred and fifty-nine the words "The person so appointed" and by inserting in lieu thereof the words "The liquidator, or if another person is appointed by the creditors to be liquidator, the person so appointed";

(ii) by inserting in the same subsection after the word "subsection" where secondly occurring the words "the liquidator or";

(k) (i) by omitting from paragraph (d) of subsection one of section two hundred and sixty-nine the word "or";

(ii) by omitting paragraph (e) of the same subsection and by inserting in lieu thereof the following paragraphs:—

(e) exercise the power of the Court of fixing a time within which debts and claims must be proved; or

(f)

*Companies (Amendment).*

(f) summon a general meeting of the No. 61, 1971 company for the purpose of obtaining the sanction of the company by special resolution in respect of any matter or for any other purpose he thinks fit.

(1) by inserting next after section two hundred and seventy-seven the following new section :—

277A. (1) Subject to this section, a person shall not, except with the leave of the Court, consent to be appointed, and shall not act, as liquidator of a company—

(a) if he is not a registered liquidator or a corporation authorised by an Act to act as a liquidator;

(b) if he is indebted to the company or to a related corporation in an amount exceeding one thousand dollars; or

(c) if he is—

- (i) an officer of the company;
- (ii) a partner, employer or employee of an officer of the company; or
- (iii) a partner or employee of an employee of an officer of the company.

Penalty : Two hundred dollars. Default penalty.

(2) Paragraph (a) of subsection (1) of this section does not apply to a members' voluntary winding up of an exempt proprietary company and paragraph (c) of subsection (1) of this section does not apply—

(a) to a members' voluntary winding up; or

(b)

*Companies (Amendment).***No. 61, 1971**

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

(3) For the purposes of subsection (1) of this section, a person shall be deemed to be an officer of a company if he is an officer of a related corporation or has, at any time within the preceding period of twenty-four months, been an officer or promoter of the company or of a related corporation.

(4) A person shall not consent to be appointed, and shall not act, as liquidator of a company if he is an undischarged bankrupt or a person who has made any arrangement or composition with his creditors generally and has not been released from his indebtedness.

**Penalty :** Two hundred dollars. Default penalty.

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

**Sec. 281.**  
(Liquidator's  
accounts.)

(m) by omitting from subsection one of section two hundred and eighty-one the words "in triplicate";

**Sec. 291.**  
(Proof of  
debts.)

(n) by inserting at the end of section two hundred and ninety-one the following new subsection :—

(3) The amount of a debt of a company (including a debt that is for, or includes, interest) is to be computed for the purposes of the winding up—

(a)

*Companies (Amendment).*


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- (a) where the winding up is a winding up under No. 61, 1971 an order of the Court of a company that has not previously commenced to be wound up voluntarily—as at the date of the order for winding up; or
- (b) in any other case—as at the date of the commencement of the winding up.
- (o) (i) by omitting from paragraph (b) of subsection Sec. 292. one of section two hundred and ninety-two the (Priorities.) words “six hundred” and by inserting in lieu thereof the words “one thousand five hundred”;
- (ii) by omitting from the same paragraph the words “within a period of four months before the commencement of the winding up” and by inserting in lieu thereof the words “before the relevant date”;
- (iii) by omitting from paragraph (c) of the same subsection the words “not exceeding in any particular case two thousand dollars”;
- (iv) by omitting from the same paragraph the words “the commencement of the winding up” and by inserting in lieu thereof the words “the relevant date”;
- (v) by omitting paragraph (d) of the same subsection and by inserting in lieu thereof the following paragraph :—
  - (d) sixthly, all amounts due on or before the relevant date to or in respect of an employee of the company (whether remunerated by way of salary, wages, commission or otherwise) by virtue of—
    - (a) a contract of employment; or
    - (b)

**No. 61, 1971**

(b) a law of the Commonwealth, or of a State, or of a Territory of the Commonwealth, relating to long service leave, extended leave, annual leave, recreation leave or sick leave;

(vi) by omitting from paragraph (e) of the same subsection the words "date of the commencement of the winding up" wherever occurring and by inserting in lieu thereof the words "relevant date";

(vii) by omitting from the same paragraph the word "mining." and by inserting in lieu thereof the following words :—

mining ; and

(f) eighthly, any amount that, pursuant to an order under subsection (2) of section one hundred and seventy-nine, or under section 5DB of the Securities Industry Act, 1970, the company was, at the relevant date, under an obligation to pay.

(viii) by inserting next after the same subsection the following new subsection :—

(1A) Where, after the relevant date, an order is made under section one hundred and seventy-nine of this Act or under section 5DB of the Securities Industry Act, 1970, against a company that is being wound up, the winding up shall, for the purposes of subsection (1) of this section, be deemed to have commenced.

and

*Companies (Amendment).*

and the assets and liabilities of the company No. 61, 1971 shall, for those purposes, be deemed to be those existing, immediately after the making of the order.

- (ix) by omitting from subsection two of the same section the words "The debts in each class specified in subsection (1) of this section" and by inserting in lieu thereof the words "After provision is made for the costs and expenses referred to in paragraph (a) of subsection (1) of this section, the debts of a class referred to in a paragraph of that subsection, paragraph (a) excepted.;"
- (x) by omitting from subsection three of the same section the words "to any employee of" and by inserting in lieu thereof the word "by";
- (xi) by omitting from the same subsection the words "wages salary annual leave or long service leave out of money advanced by a person" and by inserting in lieu thereof the following words :—

wages or salary or by virtue of—

- (a) a contract of employment; or
- (b) the law of the Commonwealth, or of a State, or of a Territory of the Commonwealth,

relating to long service leave, extended leave, annual leave, recreation leave or sick leave and the payment was made out of money advanced by a person;

(xii)

**No. 61, 1971**

(xii) by omitting from the same subsection the word "employee" where secondly and thirdly occurring and by inserting in lieu thereof the words "person who received the payment";

(xiii) by inserting next after subsection ten of the same section the following new subsection :—

(11) In this section—

(a) "floating charge" includes a charge conferring a floating security at the time of its creation which has become a fixed or specific charge; and

(b) "the relevant date" means—

(i) in the case of a company ordered to be wound up by the Court which has not previously commenced to be wound up voluntarily—the date of the winding up order; and

(ii) in any other case—the date of the commencement of the winding up.

**Sec. 293.  
(Undue  
preference.)**

(p) by omitting from subsection one of section two hundred and ninety-three the words "transfer, mortgage" and by inserting in lieu thereof the words "conveyance, transfer, charge";

**Sec. 295.  
(Liquidator's right  
to recover  
in respect  
of certain  
sales to  
or by  
company.)**

(q) by inserting in subsection four of section two hundred and ninety-five after the word "shares" the words "in the company";

(r)

*Companies (Amendment).*

(r) (i) by omitting from subsection one of section No. 61, 1971 three hundred and six the words "either himself to prosecute the offender or";

Sec. 306.  
(Prosecu-  
tion of  
delinquent  
officers and  
members of  
company.)

(ii) by omitting from subsection four of the same section the words ", if he thinks expedient,";

(iii) by inserting in the same subsection after the word "offender" the words "and for that purpose the Minister shall be deemed to have given his written consent to the proceedings being taken by the liquidator";

(iv) by omitting subsection six of the same section and by inserting in lieu thereof the following subsections :—

(6) If, where any matter is reported or referred to the Commission under this section, the Commission is of the opinion that an offence may have been committed and that the case is one in which a prosecution ought to be instituted, the Commission may institute a prosecution accordingly.

(6A) Where the Commission has formed the opinion referred to in subsection (6) of this section the Commission may, by notice in writing given before or after the institution of a prosecution in accordance with that subsection, require an officer of the company to which the matter reported or referred to the Commission relates (not being an officer who is or, in the opinion of the Commission, is likely to be, a defendant in the proceedings) to give all assistance in connection with the prosecution or proposed prosecution that he is reasonably able to give.

(v)

*Companies (Amendment).***No. 61, 1971**

(v) by omitting subsection seven of the same section and by inserting in lieu thereof the following subsection :—

(7) For the purposes of subsection (6A) of this section “officer” in relation to a company means officer as defined in subsection (1) of section five and includes—

- (a) a person who has at any time been an officer, as so defined; and
- (b) a person who acts or has at any time acted as banker, solicitor, auditor or in any other capacity for the company.

(vi) by omitting subsection eight of the same section and by inserting in lieu thereof the following subsections :—

(8) Where a person to whom a notice has been given under subsection (6A) of this section fails to comply with a requirement specified in the notice the Court may, on the application of the Commission, direct that person to comply with the requirement.

(8A) Where an application is made under subsection (8) of this section with respect to a liquidator the Court may, unless it appears that the failure 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.

Sec. 310.  
(Outstanding assets of defunct company to vest in Commission.)

(s) by omitting from subsection (1A) of section three hundred and ten the word “eleven” and by inserting in lieu thereof the word “thirteen”;

**(2)**

*Companies (Amendment).*

(2) A person who, immediately before the commencement of paragraph (e) of subsection one of this section, was an official liquidator appointed under the Principal Act shall be deemed to be an official liquidator appointed under subsection one of section two hundred and thirty-one of that Act, as amended by that paragraph, and a security given by such a liquidator under the Principal Act shall be deemed to have been given by him under subsection two of that section of that Act, as so amended.

(3) Notwithstanding the amendments made by subsection one of this section, where the winding up of a company commenced before the commencement of a provision of that subsection, the winding up shall continue after that commencement as if that provision had not been enacted.

(4) The amendment made by paragraph (s) of subsection one of this section shall be deemed to have taken effect on the first day of June, one thousand nine hundred and seventy-one.

**21.** The Principal Act is further amended by omitting paragraph (a) of subsection five of section three hundred and forty-eight and by inserting in lieu thereof the following paragraph :—

(a) which is an unlimited private company under the law of the United Kingdom relating to companies and is exempt under that law from lodging accounts with the Registrar of Companies holding office under that law.

Further  
amendment  
of Act No.  
71, 1961.  
Sec. 348.

(Balance-  
sheets.)

**22.** The Principal Act is further amended—

Further  
amendment  
of Act No.  
71, 1961.

(a) by omitting from the matter relating to Division 1 Sec. 3. of Part XII in section three the words “*Enforcement of Act*” and by inserting in lieu thereof the word “*Proceedings*”;

(b)

### **Companies (Amendment).**

**No. 61, 1971**  
Part XII.

Sec. 362.  
(Service of  
documents  
on  
company.)

Subst.  
sec. 364.

## Disposal of shares of shareholder whose whereabouts unknown.

(b) by omitting from the heading to Part XII the words “*Enforcement of Act*” and by inserting in lieu thereof the word “*Proceedings*”;

(c) (i) by inserting next after subsection two of section three hundred and sixty-two the following new subsection :—

(2A) Where a liquidator of a company has been appointed, a document may be served on the company by leaving it at, or by sending it by post to, the last address of the office of the liquidator notice of which has been lodged with the Commission.

(ii) by inserting at the end of the same section the following new subsection :—

(4) The situation of the registered office of a company shall be deemed to be the address notified under subsection one of section one hundred and twelve or, where notice of change of address has been given under subsection (1A) of that section, the address specified in that notice from the date specified in that notice as the date on which the change of address occurs.

(d) by omitting section three hundred and sixty-four and by inserting in lieu thereof the following section :—

364. (1) Where a person has been shown in the register of members of a company as a member of the company for a period of not less than ten years and the company has for a period of not less than ten years—

(a) had reasonable grounds for believing that that person had not during that last-mentioned period resided at the address shown in the register as his address; and

*Companies (Amendment).*

---

(b) had, on each occasion during that last-<sup>No. 61, 1971</sup> mentioned period when, whether or not in accordance with a provision of this Act, it sought to communicate with that person, been unable after the exercise of reasonable diligence so to do,

the company may cause an advertisement to be published in a daily newspaper circulating in the place shown in the register of members as the address of the shareholder stating that the company intends after the expiration of one month from the date of the advertisement to apply to the Treasurer for permission to transfer to the Treasurer the shares held by the shareholder in the company and any rights to subscribe for shares held in right of those shares.

(2) If after the expiration of one month from the date of the advertisement, the whereabouts of the shareholder remain unknown, the company may apply to the Treasurer for permission to transfer to the Treasurer the shares held by the shareholder in the company and any rights to subscribe for shares held in right of those shares.

(3) The application shall be accompanied by a statutory declaration by a director or secretary or manager of the company in the prescribed form and a copy of the advertisement referred to in subsection (1) of this section.

(4) Where the Treasurer grants permission for the shares and rights (if any) to be transferred, the company may transfer the shares and any rights to the Treasurer and for that purpose may execute for and on behalf of the shareholder a transfer of the shares and rights (if any) to the Treasurer.

(5)

No. 61, 1971

(5) The Treasurer shall sell or dispose of any shares or rights transferred to him under subsection (4) of this section or any shares or other property received by him in exchange for any shares or rights so transferred in such manner and at such time as he thinks fit and shall deal with the proceeds of the sale as if they were moneys paid to him pursuant to the provisions of the Unclaimed Moneys Act, 1917.

(6) The Treasurer shall not be liable for any loss or damage suffered by any person arising out of the transfer, sale or disposal of any shares, rights or other property under this section or a corresponding previous enactment.

(7) The Treasurer shall not be subject to any obligation—

- (a) to pay any call;
- (b) to make any contribution to the debts and liabilities of the company; or
- (c) to discharge any other liability,

in respect of any shares transferred to him under this section, whether the obligation arises before or after the date of the transfer, and shall not be liable to be sued for any calls or contribution or other liability, but this subsection does not affect the right of any company to forfeit any share upon which any call or contribution remains unpaid or any liability undischarged.

(8) A reference in this section to any period of not less than ten years is a reference to a period that commenced before or after the commencement of paragraph (d) of section twenty-two of the Companies Amendment) Act, 1971.

(e)

*Companies (Amendment).*

(e) by omitting paragraph (a) of subsection four of No. 61, 1971 section three hundred and seventy-four and by inserting in lieu thereof the following paragraph :—

Sec. 374.  
(Restriction  
on offering  
shares,  
debentures,  
&c., for  
subscription  
or pur-  
chase.)

(a) where the shares to which the offer relates are shares of a class which are quoted on a prescribed stock exchange in a State or a Territory of the Commonwealth, and the offer so states, specifying the stock exchange;

(f) by inserting next after section three hundred and seventy-eight the following new section :—

New sec.  
378A.

378A. (1) If, in the State, a person does an act or omits to do an act and that person would, if he had done that act, or had omitted to do that act, in another State or in a Territory of the Commonwealth, have been guilty of an offence against the law of that State or Territory that corresponds to a provision of this Act, that person is guilty of an offence against that provision of this Act.

(2) Where an act or omission constitutes an offence both under this Act and under the law of another State or of a Territory of the Commonwealth and the offender has been punished for the offence under that law, he is not liable to be punished in respect of the offence against this Act.

23. (1) Where a proprietary company that has only one director was incorporated before the commencement of paragraph (c) of section fifteen of this Act, the amendment made by subparagraph (i) of that paragraph shall be deemed

not

*Companies (Amendment).*

**No. 61, 1971** not to take effect in respect of that company until it has two directors or until the expiration of the period of six months next succeeding that commencement, whichever first occurs.

(2) A person who is the sole director of a company that, before the commencement of paragraph (c) of section fifteen of this Act, was not required to have more than one director may, until the company has two directors or until the expiration of six months after that commencement, whichever last occurs, exercise a duty or perform a function required under the Principal Act, as amended by this Act, to be exercised or performed by directors notwithstanding that the Principal Act, as so amended, requires that duty or function to be exercised or performed by two or more directors.

Application  
of sec. 132  
in certain  
cases.

**24.** Where a proprietary company was incorporated before the commencement of subparagraph (i) of paragraph (a) of section seventeen of this Act, the amendment made by that paragraph shall be deemed not to take effect in respect of that company until the expiration of the period of six months next succeeding that commencement.

Transitional  
provisions.

**25.** (1) Notwithstanding the provisions of section one-hundred and sixty-six of the Principal Act, as amended by this Act, the directors of a company incorporated before the commencement of paragraph (h) of subsection one of section six of this Act that does not have an auditor or auditors at that commencement shall, within three months after that commencement, appoint (unless the company at a general meeting has appointed) a person or persons or a firm as auditor or auditors of the company.

(2)

*Companies (Amendment).*

(2) If a director referred to in subsection one of this section fails to take all reasonable steps to comply with or secure compliance with that subsection, he shall be guilty of an offence against this Act.

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

(3) An auditor of a company appointed under subsection one of this section shall, for the purposes of and subject to the Principal Act, as amended by this Act, be deemed to have been appointed under subsection one of section one hundred and sixty-six of that Act, as so amended.

(4) Notwithstanding subsection one of this section, an exempt proprietary company incorporated before the commencement of paragraph (h) of subsection one of section six of this Act is not required to appoint a person or persons or a firm as auditor or auditors of the company within the period of three months next succeeding that commencement if—

- (a) before the expiration of that period all the members of the company have agreed that it is not necessary for the company to appoint an auditor ; and
- (b) if the company is an unlimited company, no member of the company is, at the expiration of that period, a person other than a natural person or an exempt proprietary company that is an unlimited company or a corporation that, under the law of another State or of a Territory of the Commonwealth, is an exempt proprietary company that is an unlimited company.

(5)

**No. 61, 1971**

(5) Where a company does not, pursuant to subsection four of this section appoint an auditor, the secretary of the company shall record a minute to that effect in the book containing the minutes of proceedings of general meetings of the company.

(6) Subject to this section, the provisions of Division 3 of Part VI of the Principal Act, as amended by this Act, apply to and in relation to an exempt proprietary company.

(7) Notwithstanding the Eighth Schedule to the Principal Act, as amended by this Act, a company that, during the whole of the financial year to which the return relates was an exempt proprietary company that was not an unlimited company is not required to include with its annual return a balance sheet or profit and loss account which has, pursuant to subsection three of section six of this Act, been prepared in accordance with Division 1 of, and the Ninth Schedule to, Part VI of the Principal Act as in force immediately before the commencement of section six of this Act.

**Amendment  
of Act No.  
18, 1945.**

**26.** The Public Accountants Registration Act, 1945, is amended—

**Sec. 2.  
(Defini-  
tions.)**

(a) by inserting next after the definition of "Chairman" in section two the following new definition :—

"Court" has the same meaning as in the Companies Act, 1961.

(b)

*Companies (Amendment).*

(b) by omitting subsections three and four of section No. 61, 1971 twenty-three and by inserting in lieu thereof the following subsections :—

Sec. 23.  
(Annual  
roll fee.)

(3) Where a registered public accountant fails to comply with subsection one or two of this section, the Board may remove his name from the register.

(3A) Where the name of a registered public accountant is removed from the register under subsection three of this section, the removal shall be deemed to have taken effect as on and from the prescribed day next preceding the removal.

(c) (i) by omitting from subsection seven of section twenty-five the words "district court" where firstly and secondly occurring and by inserting in lieu thereof the word "Court";

(ii) by omitting from the same subsection the words "district court to which the appeal is made" and by inserting in lieu thereof the word "Court";

(d) (i) by omitting from subsection one of section twenty-six the words "a district court" and by inserting in lieu thereof the words "the Court";

(ii) by omitting subsection two of the same section;

(iii) by omitting subsection three of the same section.

No. 61, 1971      27. The Companies (Transfer of Domicile) Act, 1968,  
 \_\_\_\_\_  
 Amendment  
 of Act No.  
 15, 1968.

Subst.  
 sec. 19.

Application  
 of Com-  
 panies Act,  
 sec. 161B.  
 (Financial  
 years of  
 grouped  
 companies.)

Sec. 20.  
 (Application  
 of Com-  
 panies Act,  
 sec. 162.)

Amend-  
 ment of Act  
 No. 11,  
 1962.

Sec. 13.  
 (Duty to  
 furnish in-  
 formation.)

Sec. 21.  
 (Commis-  
 sion may  
 correct  
 errors in  
 register, &c.)

Sec. 22.  
 (Inspection  
 of docu-  
 ments.)

(a) by omitting section nineteen and by inserting in lieu thereof the following section :—

19. The directors of a company registered pursuant to this Act shall comply with section 161B of the Companies Act within twelve months after the registration of the company pursuant to this Act.

(b) by omitting section twenty.

28. (1) The Business Names Act, 1962, is amended—

(a) by omitting from subsection one of section thirteen the word “him” and by inserting in lieu thereof the words “the Commission”;

(b) by omitting from subsection two of section twenty-one the words “together with his initials”;

(c) by inserting next after subsection two of section twenty-two the following new subsection :—

(3) The Commission may, on receiving the prescribed fee, issue to a person an uncertified reproduction or transparency or extract from a document or transparency forming part of the register.

(2)

*Companies (Amendment).*

(2) The amendments made by paragraphs (a) and No. 61, 1971 (b) of subsection one of this section shall be deemed to have taken effect on the first day of June, one thousand nine hundred and seventy-one.

**29.** (1) The Securities Industry Act, 1970, is amended— Amendment of Act No. 35, 1970.

(a) (i) by omitting from the definition of “exempt dealer” in subsection one of section four the word “Governor” and by inserting in lieu thereof the word “Commission”;

(ii) by inserting at the end of the same section the following new subsection :—

(4) Where in, or at the foot of, a section or part of a section of this Act there appears the expression “Default penalty” it shall indicate that a person who is convicted of an offence against this Act in relation to that section or part shall be guilty of a further offence against this Act if the offence continues after he is so convicted and liable to an additional penalty for each day during which the offence continues of not more than the amount expressed in the section or part as the amount of the default penalty or, if an amount is not so expressed, of not more than twenty dollars.

(b) (i) by omitting subsection seven of section 5D; Sec. 5D.  
 (ii) by omitting subsection eight of the same section; (Powers of Commission to investigate certain matters.)  
 (iii) by omitting subsection nine of the same section;

(c)

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No. 61, 1971 (c) by inserting next after the same section the following new sections :—

New secs.  
5EA, 5DB,  
5DC and  
5DD.

Investigation by  
inspector.

5DA. (1) In this section—

“inspector” means inspector appointed under subsection two of this section;

“investigation” means investigation made under this section by an inspector;

“prescribed person” means person suspected or believed by an inspector, on reasonable grounds, to be capable of giving information concerning any matter to be investigated by the inspector pursuant to this section.

(2) Notwithstanding anything in section 5D of this Act, the Minister may, where it appears to him to be in the public interest so to do, by instrument in writing—

(a) appoint a person as an inspector to investigate any matters concerning trading or dealing in securities and to report thereon in such manner as the Minister directs; and

(b) revoke any such appointment,

and any such investigation shall be deemed to be a legal proceeding within the meaning of Part IV of the Evidence Act, 1898.

(3) The Minister shall, in an instrument appointing an inspector, specify full particulars of the appointment including—

(a) the matters into which the investigation is to be made; and

(b)

*Companies (Amendment).*

(b) the terms and conditions of the appointment No. 61, 1971 including terms and conditions relating to remuneration.

(4) An inspector may require a prescribed person by notice in the prescribed form given in the prescribed manner—

- (a) to produce to the inspector such books relating to a matter to which his investigation relates as are in the custody or under the control of that person;
- (b) to give to the inspector all reasonable assistance in connection with the investigation; and
- (c) to appear before the inspector for examination on oath,

and may administer the oath referred to in paragraph (c) of this subsection.

(5) Where books are produced to an inspector under this section the inspector may take possession of the books for such period as he considers necessary for the purposes of his investigation and during that period he shall permit a person who would be entitled to inspect any one or more of those books if they were not in the possession of the inspector to inspect at all reasonable times such of those books as that person would be so entitled to inspect.

(6) A prescribed person shall not—

- (a) refuse or fail to comply with a requirement of an inspector under subsection four of this section to the extent to which he is able to comply with it;

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- (b) in purported compliance with such a requirement knowingly furnish information that is false or misleading in a material particular; or
- (c) when appearing before an inspector for examination in pursuance of such a requirement—
  - (i) make a statement that is false or misleading in a material particular; or
  - (ii) refuse or fail to take an oath.

Penalty : One thousand dollars.

(7) A duly qualified legal practitioner acting for a prescribed person—

- (a) may attend an examination of that person; and
- (b) may, to the extent that the inspector permits—
  - (i) address the inspector; and
  - (ii) examine that person,
 in relation to matters in respect of which the inspector has questioned him.

(8) A prescribed person is not excused from answering a question put to him by an inspector on the ground that the answer might tend to incriminate him but, where that person claims, before answering the question, that the answer might tend to incriminate him, neither the question nor the answer is admissible in evidence against him in criminal proceedings other than proceedings under subsection six of this section or in relation to a charge of perjury in respect of the answer.

(9)

*Companies (Amendment).*

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(9) A person who complies with the No. 61, 1971 requirement of an inspector under subsection four of this section shall not incur any liability to any person by reason only of that compliance.

(10) A person required to attend for examination under this section is entitled to such allowances and expenses as are from time to time prescribed for the purposes of subsection five of section one hundred and seventy-four of the Companies Act, 1961.

(11) Where a prescribed person fails to comply with a requirement of an inspector to the extent to which he is able to comply with it, the inspector may, unless that person proves that he had a lawful excuse for his failure, certify the failure by writing under his hand to the Court.

(12) Where an inspector gives a certificate under subsection eleven of this section the Court may inquire into the case and—

- (a) order the prescribed person to whom the certificate relates to comply with the requirement of the inspector within such period as is fixed by the Court; or
- (b) if the Court is satisfied that that person failed without lawful excuse to comply with the requirement of the inspector, punish him in the same manner as if he had been guilty of contempt of the Court.

(13) The provisions of sections one hundred and seventy-six, one hundred and seventy-seven, one hundred and seventy-eight (subsections

one,

**No. 61, 1971**

one, two, three and ten excepted) and three hundred and sixty-seven of the Companies Act, 1961, apply with such modifications as may be necessary to and in respect of an inspector appointed under this section, the investigation made by him and an examination made by him in the course of that investigation and to and in respect of his report and, without limiting the generality of the foregoing shall so apply as if—

- (a) the inspector were an inspector appointed under Part VIA of that Act;
- (b) the investigation, examination and report were an investigation, examination and report under that Part of that Act;
- (c) a reference in those sections to an officer of a company were a reference to a prescribed person;
- (d) a reference in those sections to affairs of a company were a reference to matters required to be investigated by the inspector;
- (e) a reference in those sections to subsection one of section one hundred and seventy-four were a reference to subsection six of this section; and
- (f) the words “, affairs of which were investigated by the inspector,” had been omitted from subsection nine of section one hundred and seventy-eight of that Act.

**Cost of investigation.**

5DB. (1) Subject to this section, the expenses of and incidental to an investigation by an inspector appointed under section 5DA of this Act (including the expenses incurred and payable by the Minister in any proceedings brought by him in the name of a company) shall be paid out of moneys provided by Parliament.

(2)

*Companies (Amendment).*

(2) An application referred to in subsection three of this section may be made to a court by or on behalf of the Minister—

- (a) in the course of proceedings in that court instituted by the Minister in the name of a company under subsection nine of section one hundred and seventy-eight of the Companies Act, 1961, as applied by subsection thirteen of section 5DA of this Act; or
- (b) upon, or within fourteen days after, a conviction by the court in proceedings certified by the Minister, for the purposes of the application, to have been instituted as a result of an investigation by an inspector appointed under section 5DA of this Act,

and the court may make such order with respect to the application and its subject-matter as it thinks fit.

(3) The application that may be made under subsection two of this section is an application for one or more of the following orders :—

- (a) that a specified person pay the whole, or a specified part of, the expenses of and incidental to the investigation that led to the proceedings;
- (b) where expenses have been paid under subsection one of this section, that a specified person reimburse the Crown to the extent of the payment;
- (c) that a specified person reimburse the Crown in respect of the remuneration of any servant of the Crown concerned with the investigation.

**No. 61, 1971****Conceal-  
ing, etc., of  
books relat-  
ing to  
securities.****5DC.** (1) A person who—

- (a) conceals, destroys, mutilates or alters a book relating to a matter the subject of investigation by an inspector under section 5DA of this Act; or
- (b) sends, causes to be sent or conspires with another person to send, out of the State such a book,

is guilty of an offence against this Act.

**Penalty :** Four thousand dollars or imprisonment for two years.

(2) It is a defence to a prosecution under subsection one of this section to prove that the person charged did not act with intent to defeat the purposes of section 5DA of this Act or to delay or obstruct the carrying out of an investigation under that section.

**Minister  
may make  
certain  
orders.**

**5DD.** (1) Where an investigation is being made under section 5DA of this Act and it appears to the Minister that facts concerning securities to which the investigation relates cannot be ascertained because a prescribed person referred to in that section has failed or refused to comply with a requirement of an inspector under that section, the Minister may, by order published in the Gazette, make one or more of the following orders :—

- (a) an order restraining a specified person from disposing of any interest in specified securities;
- (b) an order restraining a specified person from acquiring specified securities;
- (c) an order restraining the exercise of any voting or other rights attached to specified securities;
- (d)

*Companies (Amendment).*

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- (d) an order directing a person who is registered **No. 61, 1971** as the holder of securities in respect of which an order under this section is in force to give notice in writing of that order to any person whom he knows to be entitled to exercise a right to vote attached to those shares;
- (e) an order directing a company not to make payment, except in the course of winding up, of any sum due from the company in respect of specified securities;
- (f) an order directing a company not to register the transfer or transmission of specified securities;
- (g) an order directing a company not to issue shares to a person who holds shares in the company by reason of his holding shares in the company nor in pursuance of an offer made to such a person by reason of his holding shares in the company.

(2) A copy of an order under subsection one of this section and of any order by which it is rescinded, revoked, altered or varied shall be served—

- (a) where it relates to specified securities, on the authority or body that issued them or made them available or, where the securities are rights or options, on the authority or body against whom the right is, or would be, enforceable, or that issued or made available, or will issue or make available, the securities to which the option relates; and
- (b) where it relates to a corporation, on the corporation.

(3)

No. 61, 1971

(3) Where an order made under subsection one of this section is in force, a person aggrieved by the order may apply to the Court for revocation of the order and the Court may, if it is satisfied that it is reasonable to do so, revoke the order and any order by which it has been altered or varied.

(4) A person who contravenes or fails to comply with an order under subsection one of this section is guilty of an offence against this Act.

Penalty : One thousand dollars. Default penalty : Two hundred dollars.

(5) Where an offence under subsection four of this section is committed by a corporation, an officer of the corporation who is in default is guilty of an offence against this Act.

Penalty : One thousand dollars. Default penalty : Two hundred dollars.

(6) A prosecution under this section shall not be instituted without the consent in writing of the Minister.

(2) Where an inspector was, before the commencement of this section, appointed under subsection seven of section 5D of the Securities Industry Act, 1970, to investigate any matters concerning trading or dealing in securities and the investigation was not completed before that commencement, sections 5DA, 5DB, 5DC and 5DD of that Act, as amended by this section, apply to and in relation to the inspector and the investigation and related matters as if the inspector had, under section 5DA of that Act, as so amended, been appointed after that commencement to investigate those matters.

(3)

*Companies (Amendment).*

(3) Where, before the commencement of this section, **No. 61, 1971** an act, matter or thing had been done, or had arisen, in the course of an investigation by an inspector appointed under subsection seven of section 5D of the Securities Industry Act, 1970, to make the investigation, the act, matter or thing shall, if the investigation had not been completed before that commencement, have the same status, operation and effect in relation to the completion of the investigation after that commencement as it would have if it were done or had arisen after that commencement.

(4) Without affecting the generality of subsection three of this section, an order, application, examination, deposition, writ, summons, proceeding, record, note or report made, effected, issued, taken or given in relation to an investigation by an inspector appointed under subsection seven of section 5D of the Securities Industry Act, 1970, to make the investigation shall, if the investigation had not been completed before that commencement, have the same status, operation and effect in relation to the completion of the investigation as it would have if it were made, effected, issued, taken or given after that commencement.

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