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SOCIALIST REPUBLIC OF

SRI LANKA

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[Certified on 20th March, 2007]

L.D.—O. 44/2005

ANACT TO AMENDAND CONSOLIDATE THE LAW RELATING TO

COMPANIES

BE it enacted by the Parliament of the Democratic Socialist

Republic of Sri Lanka as follows :-

1. (1) This Act may be cited as the Companies Act, No. 07 Short title and

of 2007. date of

operation.

(2) The provisions of this Act shall come into operation

on such date (hereinafter referred to as the “appointed date”)

as the Minister may appoint, by Order published in the

Gazette.

PART I

INCORPORATION OF COMPANIES AND RELATED MATTERS

ESSENTIAL CHARACTERISTICS OF COMPANIES

2. (1) A company incorporated under this Act shall, by Legal status and

the name by which it is registered from time to time, be a capacity of a

company.

body corporate.

(2) A company shall have, both within and outside Sri

Lanka—

(a) subject to the provisions of section 13 of the Act,

the capacity to carry on or undertake any business

or activity, do any act or enter into any transaction ;

and

(b) subject to the provisions of any written law of Sri

Lanka or of any other country, all the rights, powers

and privileges necessary for the purposes of

paragraph (a).

2 —PL000786—425 (11/2005)

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Different types 3. (1) A company incorporated under this Act may be

of companies.

either—

(a) a company that issues shares, the holders of which

have the liability to contribute to the assets of the

company, if any, specified in the company’s articles

as attaching to those shares (in this Act referred to as

a “limited company”) ; or

(b) a company that issues shares, the holders of which

have an unlimited liability to contribute to the assets

of the company under its articles (in this Act referred

to as an “unlimited company”) ; or

(c) a company that does not issue shares, the members

of which undertake to contribute to the assets of the

company in the event of its being put into

liquidation, in an amount specified in the company’s

articles (in this Act referred to as a “company limited

by guarantee”).

(2) Where a limited company is incorporated as a private

company or as an off-shore company, the provisions of Part II

or Part XI shall apply respectively, to such a company.

INCORPORATION OF COMPANIES

Method of 4. (1) Subject to the provisions of subsection (2), any

incorporating a person or persons may apply to incorporate a company, other

company.

than a company limited by guarantee, by making an

application for the same to the Registrar in the prescribed

form signed by each of the initial shareholders, together with

the following documents :-

(a) a declaration stating that to the best of such person

or persons knowledge, the name of the company is

not identical or similar to that of an existing

company;

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(b) the articles of association of the company, if different

from the articles set out in the First Schedule hereto,

and signed by each of the initial shareholders ;

(c) consent from each of the initial directors under section

203, to act as a director of the company ; and

(d) consent from the initial secretary under subsection

(2) of section 221, to act as secretary of the company.

(2) A company shall have not less than two shareholders,

provided that a company may have a single shareholder where

such single shareholder is the Secretary to the Treasury who

is holding shares on behalf of the Government of Sri Lanka

or is an individual or a body corporate.

5. (1) On receipt of a properly completed application Incorporation of

for incorporation in the prescribed form, the Registrar shall— a company.

(a) enter the particulars of the company on the Register;

(b) assign a unique number to that company as its

company number ; and

(c) issue a certificate of incorporation in the prescribed

form to the applicant company.

(2) The certificate of incorporation issued under

subsection (1) shall specify—

(a) the name and number of the company ;

(b) the date on which the company was incorporated ;

(c) whether the company is a limited company, an

unlimited company or a company limited by

guarantee ;

(d) whether the company is a private company ; and

(e) whether the company is an off-shore company ;

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(3) A certificate of incorporation issued under this section

in-respect of any company, shall be conclusive evidence of

the fact that—

(a) all the requirements under this Act relating to the

incorporation of a company have been complied

with ; and

(b) the company has been incorporated under this Act

on the date specified in such certificate of

incorporation.

COMPANY NAMES

Requirements as 6. The name of every—

to name.

(a) limited company other than a listed company, shall

end in the word “Limited” or by the abbreviation

“Ltd” ;

(b) private company, shall end in the words “(Private)

Limited” or by the abbreviation “(Pvt) Ltd” ; and

(c) limited company which is a listed company, shall

end in the words “Public Limited Company” or by

the abbreviation “PLC”.

Restrictions on 7. (1) A company shall not be registered by a name

names. which—

(a) is identical with the name of any other company or

of any registered overseas company ;

(b) contains the words “Chamber of Commerce”, unless

the company is a company which is to be registered

under a licence granted under section 34 without

the addition of the word “Limited” to its name ; or

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(c) is in the opinion of the Registrar, misleading.

(2) Except with the consent of the Minister given having

regard to the national interest, no company shall be registered

by a name which contains the words :—

(a) “President”, “Presidential” or other words which in

the opinion of the Registrar suggest or are calculated

to suggest, the patronage of the President or

connection with the Government or any Government

Department ;

(b) “Municipal”, “incorporated” or other words which

in the opinion of the Registrar suggest or are

calculated to suggest, connection with any

Municipality or other local authority or with any

society or body incorporated by an Act of

Parliament;

(c) “Co-operative” or “Society” ; or

(d) “National”, “State” or “Sri Lanka” or other words

which in the opinion of the Registrar suggest or are

calculated to suggest, any connection with the

Government or any Government Department.

(3) In determining for the purposes of subsection (1)

whether one name is identical with another, the following

words shall be disregarded :—

(a) the word “the”, where it is the first word of the name;

(b) the following words and expressions, where they

appear at the end of the name :

(i) “company” ;

(ii) “and company” ;

(iii) “company limited” ;

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(iv) “and company limited” ;

(v) “limited” ;

(vi) “unlimited” ;

(vii) “(Private) limited” ;

(viii) “Public Limited Company” ;

(c) abbreviations referred to in section 6, where they

appear at the end of the name ;

(d) type and case of letters, accents, spaces between

letters and punctuation marks ; and

(e) “and” or “&”.

Change of 8. (1) A company may change its name by special

name. resolution with the prior approval in writing of the Registrar.

(2) Where a company has resolved to change its name

under subsection (1), it shall within ten working days of the

change, give notice of the change to the Registrar in the

prescribed form.

(3) Upon receiving notice that a company has changed

its name, the Registrar shall—

(a) enter the new name on the Register in place of the

former name ; and

(b) issue a fresh certificate of incorporation in the

prescribed form, altered to indicate—

(i) the change of name ; and

(ii) where the company has become or has ceased

to be a private company, the fact of that change.

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(4) The change of name shall not affect any rights or

obligations of the company, or render ineffective any legal

proceedings by or against the company. Any legal

proceedings that might have been continued or commenced

against it by its former name, may be continued or commenced

against it by its new name.

(5) Where a company fails to comply with

subsection(2)—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding fifty

thousand rupees ; and

(b) every officer of the company who is in default shall

be guilty of an offence and be liable on conviction

to a fine not exceeding fifty thousand rupees.

9. (1) A company shall within thirty working days of Public notice of

its incorporation under this Act, give public notice of its name.

incorporation, specifying —

(a) the name and company number of the company ;

and

(b) the address of the company’s registered office.

(2) Where a company changes its name in accordance

with the provisions of section 8, it shall within twenty working

days of such change give public notice of it, specifying—

(a) the former name of the company ;

(b) the company number ;

(c) the address of the registered office of the company ;

and

(d) the new name of the company.

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(3) Where a company fails to publish the notice required

under subsection (1) or (2) :—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding fifty

thousand rupees ; and

(b) the Registrar shall cause the relevant notice to be

published.

Direction to 10. (1) Notwithstanding the provisions of section 7, the

change name. Registrar may direct a company to change its name in the

following circumstances :—

(a) where through inadvertence or otherwise, it has been

registered with a name which contravenes the

provisions of section 6 ;

(b) a request is made to the Registrar to do so within

three months of the company giving public notice

of the name objected to under section 9, by another

company or by a registered overseas company,

where—

(i) the name of the first-mentioned company is

so similar to the name of the requesting

company that it is likely to cause confusion;

and

(ii) the requesting company was registered with

its current name before the first-mentioned

company was registered with the name

objected to ; or

(c) a request is made to the Registrar to do so by any

person and the Registrar is satisfied that the name

was not applied for in good faith for the purpose of

identifying the company.

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(2) A company shall comply with a direction issued by a

Registrar under subsection (1) within a period of six weeks

from the date of the issue of such direction, or such longer

period as the Registrar may in his discretion permit.

(3) A company which fails to comply with a direction

issued under this section shall be guilty of an offence and be

liable on conviction to a fine not exceeding two hundred

thousand rupees.

11. (1) Where a company ceases to be a private company, Change of name

it shall be deemed to have resolved to change its name in upon change of

accordance with the provisions of subsection (1) of section status of

company.

8, by omitting the word “(Private)”.

(2) Where a company which was not a private company

becomes a private company under section 29, it shall be

deemed to have resolved to change its name in accordance

with the provisions of subsection (1) of section 8 by

substituting for the word “Limited” at the end of its name, of

the words “(Private) Limited”.

(3) Where a limited company becomes a listed company,

it shall be deemed to have resolved to change its name in

accordance with the provisions of subsection (1) of section 8

by substituting for the word “Limited” at the end of its name,

of the words “Public Limited Company”.

(4) Where a limited company ceases to be a listed

company, it shall be deemed to have resolved to change its

name in accordance with the provisions of subsection (1) of

section 8, by substituting for the words “Public Limited

Company” at the end of its name, of the word “Limited”.

(5) Where a company is deemed to have resolved to

change its name under this section, it shall within ten working

days of such change, give public notice of the change and

send a copy of such notice to the Registrar, and the provisions

of subsections (3) and (4) of section 8, shall apply to and in

relation to such change of name.

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(6) Where a company fails to comply with the

requirements of subsection (5) —

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding fifty

thousand rupees ; and

(b) every officer of the company who is in default shall

be guilty an offence and be liable on conviction to

a fine not exceeding fifty thousand rupees.

Use of company 12. (1) A company shall ensure that its name and its

name and company number are clearly stated in—

company

number.

(a) all business letters of the company ;

(b) all notices and other official publications of the

company ;

(c) all bills of exchange, promissory notes,

endorsements, cheques and orders for money or

goods signed on behalf of the company ;

(d) all invoices, receipts and letters of credit of the

company ;

(e) all other documents issued or signed by the

company which creates or is evidence of a legal

obligation of the company ; and

(f) the company seal, if any.

(2) Every company shall ensure that its name and its

company number are clearly displayed at its registered office.

(3) Where a company fails to comply with the provisions

of subsection (1) or subsection (2)—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding fifty

thousand rupees ; and

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(b) every officer of the company who is in default shall

be guilty of an offence and be liable on conviction

to a fine not exceeding fifty thousand rupees.

(4) Where—

(a) a document that creates or is evidence of a legal

obligation of a company, is issued or signed by or

on behalf of the company ; and

(b) the name and company number of the company are

not correctly stated in the document,

every person who issued or signed the document will be

liable to the same extent as the company if the company

fails to discharge the obligation, unless-

(c) the person who issued or signed the document

proves, that the person in whose favour the

obligation was incurred was aware at the time the

document was issued or signed, that the obligation

was incurred by the company ; or

(d) the court is satisfied that it would not be just and

equitable for that person to be so liable.

(5) For the purposes of subsections (1) and (2), a company

may use a generally recognized abbreviation of any word in

its name, unless it is misleading to do so.

ARTICLES OFASSOCIATION

13. The articles of association of a company may provide Contents of

for any matter not inconsistent with the provisions of this Act articles.

other than the First Schedule hereto, and in particular may

provide for—

(a) the objects of the company ;

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(b) the rights and obligations of shareholders of the

company ; and

(c) the management and administration of the company.

Application of 14. The articles of association set out in the First

model articles. Schedule hereto (hereinafter referred to as “model articles”)

shall apply in respect of any company other than a company

limited by guarantee, except to the extent that the company

adopts articles which exclude, modify or are inconsistent

with the model articles.

Adoption or 15. (1) Subject to the provisions of this Act and any

amendment of conditions contained in its articles, a company may at any

articles.

time by special resolution —

(a) adopt new articles ;

(b) if it has articles which differ from the articles of

association set out in the First Schedule, adopt such

articles as its articles ; or

(c) alter its articles.

(2) Where a company by a special resolution alters its

articles, it shall give notice of such resolution to the Registrar

within ten working days, setting out in full the text of the

resolution and of any new articles or of any alterations to the

company’s articles.

(3) Where a company fails to comply with the requirement

of subsection (2)—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding fifty

thousand rupees ; and

(b) every officer of the company who is in default shall

be guilty of an offence and be liable on conviction

to a fine not exceeding fifty thousand rupees.

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16. Subject to the provision of section 89, the articles of Effect of articles.

a company shall bind the company and its shareholders as if

there were a contract between the company and its

shareholders. In particular, all money payable by any

shareholder to the company under the articles, shall be a debt

due from that shareholder to the company.

17. (1) Where the articles of a company sets-out the Effect of

objects of the company, there shall be deemed to be a statement of

objects in

restriction placed by the articles in carrying on any business articles.

or activity that is not within those objects, unless the articles

expressly provide otherwise.

(2) Where the articles of a company provide for any

restriction on the business or activities in which the company

may engage—

(a) the capacity and powers of the company shall not

be affected by such restriction ; and

(b) no act of the company, no contract or other

obligation entered into by the company and no

transfer of property by or to the company, shall be

invalid by reason only of the fact that it was done in

contravention of such restriction.

(3) Nothing in subsection (2) shall affect —

(a) the ability of a shareholder or director of the

company to make an application to court under

section 233 to restrain the company from acting in a

manner inconsistent with a restriction placed by the

articles, unless the company has entered into a

contract or other binding obligation to do so; or

(b) the liability of a director of the company for acting

in breach of the provisions of section 188.

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Right of 18. (1) A shareholder has a right at any time to request

shareholders to a a company in writing for a copy of the articles of the company,

copy of the

and subject to subsection (2), the company shall comply

articles.

with such request within five working days of the date of

receipt and such request.

(2) A company to which a request is made under

subsection (1) may—

(a) require the shareholder to pay a fee of not more than

five hundred rupees before providing a copy of the

articles; or

(b) decline to provide a copy of the articles, if a copy

has been provided to that shareholder within the

previous six months.

(3) Where a company fails to comply with the

requirements of subsection (1) —

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding two

hundred thousand rupees; and

(b) every officer of the company who is in default shall

be guilty of an offence and be liable on conviction

to a fine not exceeding one hundred thousand

rupees.

COMPANY CONTRACTS ETC.

Method of 19. (1) A contract or other enforceable obligation may

contracting. be entered into by a company as follows :—

(a) an obligation which, if entered into by a natural

person is required by law to be in writing signed by

that person and be notarially attested, may be

entered into on behalf of the company in writing

signed under the name of the company by —

(i) two directors of the company;

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(ii) if there be only one director, by that director;

(iii) if the articles of the company so provide, by

any other person or class of persons; or

(iv) one or more attorneys appointed by the

company,

and be notarially executed;

(b) an obligation which, if entered into by a natural

person is required by law to be in writing and signed

by that person, may be entered into on behalf of the

company in writing signed by a person acting under

the company’s express or implied authority;

(c) an obligation which if entered into by a natural

person is not required by law to be in writing, may

be entered into on behalf of the company in writing

or orally, by a person acting under the company’s

express or implied authority.

(2) The provisions of subsection (1) shall apply to a

contract or other obligation —

(a) whether or not that contract or obligation is entered

into in Sri Lanka; and

(c) whether or not the law governing the contract or

obligation is the law of Sri Lanka.

(3) For the purpose of this section, a company may use a

generally recognised abbreviation of any word in the name,

unless it is misleading to do so.

20. (1) Subject to its articles, a company may by an Attorneys.

instrument in writing executed in accordance with the

provisions of section 19, appoint a person as its attorney

either generally or in relation to a specified matter.

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(2) Any act of the attorney carried out in accordance with

the instrument referred to in subsection (1), shall be binding

on the company.

(3) The provisions of the Powers of Attorney Ordinance

(Chapter 122) and the law relating to powers of attorney

executed by a natural person, shall with necessary

modifications, apply in relation to a power of attorney

executed by a company to the same extent as if the company

was a natural person, and as if the commencement of the

liquidation or if there is no liquidation, the removal of the

company from the Register, was the death of a person.

Authority of 21. (1) A company or a guarantor of an obligation of

directors, the company or any person claiming under the company,

officers and

agents. may not assert against a person dealing with that company or

with any person who has acquired rights from the company,

that —

(a) the articles of the company have not been complied

with; or

(b) the persons named in the most recent notice filed

under section 223 or the annual return delivered

under section 131of this Act, are not the directors or

the secretary of the company, as the case may be; or

(c) a person held out by a company as a director, officer

or agent of the company—

(i) has not been duly appointed; or

(ii) does not have authority to exercise the powers

and perform the duties that are customary in

the business of the company or are normal for

a director, officer or agent of a company

carrying on business of the kind carried on by

that company; or

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(d) a document issued by any director, the secretary of

the company or by any officer or agent, with actual

or normal authority to issue the document, is not

valid or genuine,

unless that person has, or by virtue of that person’s position

with or relationship to the company, ought to have

knowledge to the contrary.

(2) The provisions of subsection (1) shall apply even in a

situation where a person referred to in paragraphs (b) to (d) of

that subsection acts fraudulently or forges a document that

appears to have been signed on behalf of the company, unless

the person dealing with the company or who has acquired

rights from the company, has actual knowledge of such fraud

or forgery.

22. Subject to the provisions of subsection (3) of section No constructive

105, a person shall not be affected by or deemed to have notice.

notice or knowledge of the contents of the articles of company

or any other document relating to a company, by reason only

of the fact that it has been delivered to the Registrar for filing

or is available for inspection at any office of the company.

PRE-INCORPORATION CONTRACTS

23. (1) For the purpose of this section and sections 24 pre-

incorporation

and 25 of this Act, the expression “pre-incorporation contracts may be

contract” means — ratified.

(a) a contract purported to have been entered into by a

company before its incorporation; or

(b) a contract entered into by a person on behalf of a

company before and in contemplation of its

incorporation.

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(2) Notwithstanding anything to the contrary in any law,

a pre-incorporation contract may be ratified within such

period as may be specified in the contract or if no such period

is specified, within a reasonable time after the incorporation

of such company, in the name of which or on behalf of which

it has been entered into.

(3) A pre-incorporation contract that is ratified under

subsection (2), shall be as valid and enforceable as if the

company had been a party to the contract at the time it was

entered into.

(4) A pre-incorporation contract may be ratified by a

company in the same manner as a contract may be entered

into on behalf of a company under section 19.

Warranties 24. (1) Notwithstanding anything to the contrary in any

implied in pre- law, in a pre-incorporation contract, unless a contrary intention

incorporation

is expressed in the contract, there shall be an implied warranty

contracts.

by the person who purports to enter into such contract in the

name of or on behalf of the company—

(a) that the company will be incorporated within such

period as may be specified in the contract, or if no

period is specified, within a reasonable time after

the making of the contract; and

(b) that the company will ratify the contract within such

period as may be specified in the contract or if no

period is specified, within a reasonable time after

the incorporation of such company.

(2) The amount of damages recoverable in an action for

breach of an implied warranty referred to in subsection (1),

shall be the same as the amount of damages that may be

recoverable in an action against the company for damages

for breach by the company of the unperformed obligations

under the contract, if the contract had been ratified by the

company.

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(3) Where after its incorporation, a company enters into a

contract in the same terms as or in substitution for, a pre-

incorporation contract (not being a contract ratified by the

company under section 23), the liability of a person under

subsection (1) shall be discharged.

25. Where a company has acquired property pursuant to Failure to

a pre-incorporation contract that has not been ratified by the ratify.

company after its incorporation, a court may on an application

made in that behalf by the party from whom the property was

acquired, make an order —

(a) directing the company to return property acquired

under the pre-incorporation contract, to that party;

(b) validating the contract in whole or in part; or

(c) granting any other relief in favour of that party

relating to that property acquired.

AUTHENTICATION OF DOCUMENTS BY COMPANY

26. A document or record of proceedings requiring Authentication

authentication by a company shall be signed by a director, of documents

secretary, or other authorised officer of the company. by company.

PART II

PRIVATE COMPANIES

27. The articles of a private company shall include Articles of a

provisions which— private

company.

(a) prohibit the company from offering shares or other

securities issued by the company to the public; and

(b) limit the number of its shareholders to fifty, not

including shareholders who are—

(i) employees of the company; or

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(ii) former employees of the company who

became shareholders of the company while

being employees of such company and who

have continued to be shareholders after

ceasing to be employees of the company.

Company 28. (1) If a private company alters its articles in such a

ceasing to be a way that the articles no longer comply with the requirments

private of section 27—

company.

(a) the company shall cease to be a private company;

(b) provisions of sections 30 and 31 shall cease to apply

to that company; and

(c) the company shall be deemed to have changed its

name in accordance with section 11.

(2) If a private company fails to comply with the

requirements specified in section 27—

(a) the company shall cease to be a private company;

(b) provisions of sections 30 and 31 shall cease to apply

to that company; and

(c) the company shall be deemed to have changed its

name in accordance with section 11.

(3) The court may determine that provisions of subsection

(2) shall not apply in respect of failure by a private company,

where it is satisfied that—

(a) the failure to comply was due to inadvertence;

(b) the failure to comply has been rectified; or

(c) in all the circumstances of the case it is just and

equitable to reach such determination.

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29. Where a limited company alters its articles so that Company may

the articles comply with the requirement of section 27— become a private

company.

(a) the company shall become a private company; and

(b) the company shall be deemed to have changed its

name in accordance with the provisions of

section11.

30. (1) A private company may by unanimous Private

resolution of its shareholders dispense with the keeping of companies need

an interests register, and while such a resolution is in force, not keep interests

register.

no provision of this Act which requires any matter to be entered

in the interests register of a company, shall apply to such

private company.

(2) A unanimous resolution under subsection (1) shall

cease to have effect, if any shareholder gives notice in writing

to the company, that he requires it to keep an interests register.

31. (1) Where all the shareholders of a private company Unanimous

agree in writing to any action which has been taken, or is to agreement of

shareholders.

be taken by the company—

(a) the taking of that action is deemed to be validly

authorised by the company, notwithstanding any

provision in the articles of the company to the

contrary; and

(b) the provisions contained in the list of sections of

this Act specified in the Second Schedule hereto,

shall not apply to and in relation to that action.

(2) Without limiting the matters which may be agreed to

under subsection (1), the provisions of that subsection shall

apply where all the shareholders of a private company agree

to or concur in —

(a) the issue of shares by the company;

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(b) the making of a distribution by the company;

(c) the repurchase or redemption of shares in the

company;

(d) the giving of financial assistance by a company for

the purpose of or in connection with the purchase of

shares in the company;

(e) the payment of remuneration to a director, or the

making of a loan to a director, or the conferment of

any other benefit on a director; or

(f) the entering into a contract between an interested

director and the company.

(3) Where a distribution is made by a company under

subsection (2) and as a consequence of making that

distribution the company fails to satisfy the solvency test,

such distribution shall be deemed not to have been made

validly.

(4) A distribution to a shareholder which is deemed not

to have been validly made under subsection (3) may be

recovered by the company from such shareholder, unless —

(a) the shareholder received the distribution in good

faith and without knowledge of the company’s failure

to satisfy the solvency test;

(b) the shareholder has altered his position relying on

the validity of such distribution; and

(c) it would be unreasonable in view of the

circumstances, to require repayment in full or at all.

(5) Where reasonable grounds did not exist for believing

that the company would be able to satisfy the solvency test

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after the making of a distribution which is deemed not to

have been validly made, each shareholder who agreed to the

making of such distribution will be personally liable to the

company, to repay to the company so much of the distribution

which the company is not able to recover from the

shareholders to whom the distribution was made.

(6) Where an action for recovery is brought against a

shareholder under subsection (4) or (5), and the court is

satisfied that the company could by making a distribution of

a lesser amount have satisfied the solvency test, the court

may —

(a) permit the shareholder to retain; or

(b) relieve the shareholder from liability in respect of,

an amount equal to the value of any distribution that the

company could properly have made under the circumstances.

PART III

COMPANIES LIMITED BY GUARANTEE

32. Any two or more persons may apply to form a Application for

company limited by guarantee by making an application to incorporation of

the Registrar for the same in the prescribed form signed by a company

limited by

each of the initial members, together with the following

guarantee.

documents :—

(a) the articles of association of the company;

(b) a consent under section 203 from each of the initial

directors, to act as a director of the company; and

(c) a consent under section 221 from the initial

secretary, to act as secretary of the company.

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Company 33. (1) A company limited by guarantee shall have

limited by articles which sets out—

guarantee

must have

articles. (a) the objects of the company; and

(b) the amount which each member of the company

undertakes to contribute to the assets of the company,

in the event of such company being put into

liquidation.

(2) Nothing in subsection (1) shall prevent a company

limited by guarantee from providing in its articles, that

specified clauses of the articles of association set out in the

First Schedule hereto, shall apply to that company and any

such provision shall have effect accordingly.

Power to 34. (1) Where the Registrar is satisfied that an

dispose with association about to be formed as a company limited by

“limited” in

guarantee is to be formed for promoting commerce, art,

the name of

charitable science, religion, charity, sport, or any other useful object,

and other and intends to apply its profits, if any, or other income in

companies. promoting its objects, and to prohibit the payment of any

dividend to its members —

(a) the Registrar may by licence direct that the

association be registered as a company limited by

guarantee, without the addition of the word

“Limited” to its name; and

(b) the association may be registered accordingly and

shall on registration enjoy all the privileges and

subject to the provisions of this section, be subject

to all the obligations of a limited company.

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

(a) that the objects of a company limited by guarantee

are restricted to those specified in subsection (1)

and to objects incidental or conducive to them; and

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(b) that by its articles the company is required to apply

its profits or other income in promoting its objects

and is prohibited from paying any dividend to its

members,

the Registrar may by licence authorize the company to make

by special resolution a change in its name including or

consisting of the omission of the word “Limited”. The

provisions of subsections (2), (3), (4) and (5) of section 8

shall apply to a change of name under this subsection.

(3) A licence granted under this section may be subject

to such terms and conditions as the Registrar thinks necessary

for the purpose of ensuring that the association conforms to

the requirements of subsection (1). The terms and conditions

shall be binding on the association and shall, if the Registrar

so directs, be incorporated into the articles of such company.

(4) No alteration may be made in the articles of a company

to which a licence has been granted under this section, without

the prior written approval of the Registrar.

(5) The provisions of section 6 shall not apply in respect

of a company to which a licence is granted under this section.

(6) A licence granted under this section may at any time

be revoked by the Registrar where the company to which the

licence is granted fails to comply with the requirements of

subsection (1) or subsection (3). Upon revocation of a licnece,

the Registrar shall enter upon the register the word “Limited”

at the end of the name of the company, and the company

shall cease to enjoy the exemptions and privileges granted

by the provisions of this section. The provision of subsections

(3) and (4) of section 8 shall apply to a change of name under

this subsection.

(7) Before a licence is revoked under subsection (6), the

Registrar shall give the company notice in writing of his

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intention and shall afford the association or company an

opportunity of being heard in opposition to the revocation.

(8) Where an association in respect of which a licence

under this section is in force alters the provisions of its

constitution with respect to its objects, the Registrar may,

unless he sees fit to revoke the licence, vary, add to or alter

the terms and conditions subject to which the license was

granted.

Provisions 35. (1) The provisions contained in the list of sections

which apply to of this Act specified in the Third Schedule hereto, shall not

companies

apply to and in respect of a company limited by guarantee.

limited by

guarantee.

(2) The provisions of this Act other than the sections

referred to in subsection (1), shall apply to a company limited

by guarantee with all necessary modifications, as if—

(a) the company were a limited company ;

(b) references to shareholders were references to

members of the company ;

(c) each member held one share in the company ; and

(d) references to the share register were references to

the register of members.

PART IV

SHARES AND DEBENTURES

PROSPECTUS

Dating of 36. A prospectus issued by or on behalf of a company or

prospectus. in relation to a company to be formed shall bear a date, and

such date shall unless the contrary is proved, be taken as the

date of publication of such prospectus.

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37. (1) Every prospectus issued by or on behalf of a Specific

company or by or on behalf of any person who is or has been requirements as

to particulars in

engaged or interested in the formation of the company, shall prospectus.

contain the information specified in Part I of the Fourth

Schedule hereto and set out the reports specified in Part II of

that Schedule. The provisions of Parts I and II shall have

effect, subject to the provisions contained in Part III of that

Schedule.

(2) A condition requiring or binding an applicant for

shares in or debentures of a company, to waive compliance

with any requirement of this section, or purporting to affect

him with notice of any contract, document, or matter not

specifically referred to in the prospectus, shall be void.

(3) It shall not be lawful to issue any form for application

for shares in or debentures of a company, unless the form is

issued with a prospectus which complies with the requirements

of this section :

Provided that the provisions of this subsection shall not

apply, where it is shown that the form for application was

issued either—

(a) in connection with a bona fide invitation to a person

to enter into an under-writing agreement with respect

to the shatres or debentures ;

(b) in relation to shares or debentures which were not

offered to the public ; or

(c) in relation to issuance of commercial papers by a

company listed on a stock exchange and offered to

the public.

(4) Subject to the provisions of subsections (1) and (2),

any person who acts in contravention of the provisions of

subsection (3) shall be guilty of an offence and be liable on

conviction to a fine not exceeding two hundred thousand

rupees.

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(5) In the event of non-compliance with or contravention

of any of the requirements of this section, a director or other

person responsible for the issue of the prospectus shall not

incur any liability by reason of such non-compliance or

contravention, if—

(a) as regards any matter not disclosed he proves that

he was not cognizant thereof ;

(b) he proves that the non-compliance or contravention

arose from an honest mistake of fact on his part ; or

(c) the non-compliance or contravention was in respect

of any matter which in the opinion of the court was

immaterial or was otherwise such as ought, having

regard to all the circumstances of the case, reasonably

to be excused :

Provided that, in the event of failure to include in a

prospectus a statement with respect to the matters specified

in paragraph 17 of the Fourth Schedule hereto, no director or

other person shall incur any liability in respect of the failure,

unless it be proved that he had knowledge of the matters not

disclosed.

(6) The provision of this section shall not apply to the

issue to existing shareholders or debenture holders of a

company, of a prospectus or form of application relating to

shares in or debentures of the company, whether an applicant

for shares or debentures shall or shall not have the right to

renounce in favour of other persons. Save as aforesaid, the

provisions of this section shall apply to a prospectus or a

form of application whether issued on or with reference to

the formation of a company or subsequently.

(7) Nothing in this section shall limit or diminish any

liability which a person may incur under any written law or

under this Act (other than this section).

(8) Where a prospectus has been sent for registration in

accordance with the provisions of section 40 and has been

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registered by the Registrar, nothing in the preceding

provisions of this section shall be deemed or construed to

prohibit the issue or publication of any notice, circular or

advertisement stating that the prospectus has been registered

and issued and that copies thereof are available on

application, if such notice, circular or advertisement does

not contain any invitation to the public to subscribe for or

purchase any shares in or debentures of a company.

38. (1) A prospectus inviting persons to subscribe for Expert’s consent

shares in or debentures of a company and including a to issue of

prospectus

statement purporting to be made by an expert, shall not be

containing

issued, unless— statement by

him.

(a) such expert has given and has not before delivery of

a copy of the prospectus for registration, withdrawn

his written consent to the issue thereof with the

statement included in the form and context in which

it is included ; and

(b) a statement appears in the prospectus that such expert

has given and has not withdrawn his consent as

referred to in paragraph (a).

(2) Where any prospectus is issued in contravention of

the provision of this section, the company and every person

who is knowingly a party to the issue thereof, shall be guilty

of an offence and be liable on conviction to a fine not

exceeding two hundred thousand rupees.

(3) For the purpose of this section, the term “expert”

includes an engineer, a valuer, an auditor, an accountant and

any other person having similar professional qualifications.

39. (1) No bank shall be named as a company’s banker Consent of bank

in any prospectus inviting persons to subscribe for shares in or attorney-at-

law or auditor

or debentures of the company, unless such bank has given necessary for

and has not before delivery of a copy of the prospectus for inclusion of

registration, withdrawn its written consent to the inclusion name in

prospectus.

in such prospectus of its names as the company’s banker :

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Provided that a bank shall not be deemed for the purposes

of this Act to have authorised the issue of a prospectus, by

reason only of it having given the consent to the inclusion in

such prospectus of its name as the company’s bankers.

(2) No attorney-at-law shall be named as a company’s

lawyer in a prospectus inviting persons to subscribe for shares

in or debentures of the company, unless such attorney-at-law

has given and has not before delivery of a copy of the

prospectus for registration, withdrawn his written consent to

the inclusion in such prospectus of his name as the company’s

lawyer :

Provided that an attorney-at-law shall not be deemed for

the purposes of this Act to have authorised the issue of a

prospectus, by reason only of his having given the consent

to the inclusion in such prospectus of his name as the

company’s lawyer.

(3) No auditor shall be named as a company’s auditor in a

prospectus inviting persons to subscribe for shares in or

debentures of the company, unless such auditor has given

and has not before delivery of a copy of the prospectus for

registration, withdrawn his written consent to the inclusion

in such prospectus of his name as the company’s auditor :

Provided that an auditor shall not be deemed for the

purposes of this Act to have authorized the issue of a

prospectus, by reason only of his having given the consent

to the inclusion in such prospectus of his name as the

company’s auditor.

(4) Where the name of any bank, attorney-at-law or auditor

is included in any prospectus of a company in contravention

of the provisions of this section, the company and every

person who is knowingly a party to the issue thereof, shall be

guilty of an offence and be liable on conviction to a fine not

exceeding two hundred thousand rupees.

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40. (1) No prospectus shall be issued by or on behalf of Registration of

prospectus.

a company or in relation to a company to be formed, unless

on or before the date of its publication, there has been

delivered to the Registrar for registration a copy of such

prospectus signed by every person who is named in such

prospectus as a director or proposed director of the company,

or by his agent authorised in writing, and having endorsed

thereon or attached thereto—

(a) written consent from an expert to the issue of the

prospectus as required by section 38 ;

(b) a declaration made and subscribed to by every

person who is named in such prospectus as a director

or a proposed director of the company, to the effect

that he has read the provisions of this Act relating to

the issue of a prospectus and that those provisions

have been complied with ; and

(c) in the case of prospectus issued generally, where the

persons making any report required by Part II of the

Fourth Schedule hereto have made or have without

giving the reasons, indicated in such prospectus any

such adjustments as are mentioned in paragraph 30

of that Schedule, and a written statement signed by

such person setting out the adjustments and giving

the reasons therefor.

(2) Every prospectus shall on the face of it—

(a) state that a copy has been delivered for registration

as required by this section ; and

(b) set out or refer to statements included in the

prospectus which specify any documents required

by this section to be endorsed on or attached to the

copy so delivered.

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(3) The Registrar shall not register a prospectus—

(a) unless the copy thereof is signed in the manner

required by this section ;

(b) unless it has endorsed thereon or attached thereto

the dosuments (if any) specified as aforesaid ;

(c) unless it bears the date of the delivery of the copy

thereof to the Registrar under this section, or it bears

a future date to be inserted in such prospectus under

the provisions of section 36 ; and

(d) where it bears a future date as hereinbefore provided,

unless that date has been confirmed or altered by

notice served on the Registrar.

(4) Where a prsopectus is issued without a copy thereof

being delivered under this section to the Registrar or without

a copy so delivered having been endorsed thereon or attached

thereto the required documents referred to in subsection (1),

the company and every person who is knowingly a party to

the issue of the prospectus, shall be guilty of an offence and

be liable on conviction to a fine not exceeding two hundred

thousand rupees.

Civil liability for 41. (1) Subject to the provisions of this section, where

untrue in a prospectus invites persons to subscribe for shares in or

prospectus. debentures of a company, the following persons shall be liable

to pay compensation to all persons who subscribe for any

shares or debentures on the faith of the prospectus, for the

loss or damage they may have sustained by reason of any

untrue statement included in such prospectus, that is to say:—

(a) every person who is a director of the company, at

the time of the issue of the prospectus ;

(b) every person who has authorised himself to be

named and is named in the prospectus as a director

or as having agreed to become a director, either

immediately or after an interval of time ;

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

(d) every person who has authorised the issue of the

prospectus :

Provided that, where under the provisions of section 38,

the consent of any person is required to the issue of a

prospectus and such person has given such consent, such

person shall not by reason of his having given such consent,

be liable under the provisions of this subsection as a person

who has authorised the issue of the prospectus, except in

respect of an untrue statement purporting to be made by him

as an expert.

(2) No person shall be liable under the provisions of

subsection (1), if he proves that—

(a) having consented to become a director of the

company he withdrew his consent before the issue

of the prospectus and that it was issued without his

authority or consent ;

(b) the prospectus was issued without his knowledge or

consent and that on becoming aware of its issue, he

forthwith gave reasonable public notice that it was

issued without his knowledge or consent ;

(c) after the issue of the prospectus and before allotment

thereunder, he on becoming aware of any untrue

statement in such prospectus, withdrew his consent

thereto and gave reasonable pubilc notice of the

withdrawal and of the reasons therefor ; or

(d) (i) as regards every untrue statement not

purporting to be made on the authority of an

expert or of a public official document or

statement, he had reasonable ground to

believe and did up to the time of the allotment

of the shares or debentures, as the case may

be, believed that the statement was true ;

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(ii) as regards every untrue statement purporting

to be a statement by an expert or contained

in what purports to be a copy of or extract

from a report or valuation of an expert, it fairly

represented the statement or was a correct and

fair copy of or extract from the report or

valuation, as the case may be, and he had

reasonable ground to believe and did up to

the time of the issue of the prospectus

believed, that the person making the

statement was competent to make it and that

person had given the consent required under

section 38 to the issue of the prospectus and

had not withdrawn that consent before

delivery of a copy of the prospectus for

registration or to his knowledge, before

allotment thereunder; and

(iii) as regards every untrue statement purporting

to be a statement made by a person in his

official capacity or contained in what purports

to be a copy or extract from a public document

issued officially, it was a correct and fair

representation of the statement or copy or

extract from the document :

Provided that the provisions of this

subsection shall not apply in the case of a

person liable, by reason of his having given

the consent required under section 38, as a

person who has authorised the issue of the

prospectus in respect of an untrue statement

purporting to be made by him as an expert.

(3) A person who apart from the provisions of this

subsection, would under the provisions of subsection (1) be

liable by reason of his having given the consent required

under the provisions of section 38 as a person who has

authorised the issue of a prospectus in respect of an untrue

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statement purporting to be made by him as an expert, shall

not be so liable, if he proves that —

(a) having given his consent under the provisions of

section 38 to the issue of the prospectus, he withdrew

it in writing before delivery of a copy of the

prospectus for registration ;

(b) after delivery of a copy of the prospectus for

registration and before allotment thereunder, he on

becoming aware of the untrue statement withdrew

his consent in writing and gave reasonable public

notice of the withdrawal and of the reason

therefor;or

(c) he was competent to make the statement and that he

had reasonable ground to believe and did up to the

time of the allotment of the shares or debentures, as

the case may be, believed that the statement was

true.

(4) Where—

(a) the prospectus contains the name of a person as a

director of the company or as having agreed to

become a director of such company and he has not

consented to become a director or has withdrawn

his consent before the issue of the prospectus and

has not authorised or consented to the issue of such

prospectus ; or

(b) the consent of a person is required under section 38

to the issue of the prospectus and he either has not

given that consent or has withdrawn it before the

issue of the prospectus,

the directors of the company, except any director without

whose knowledge or consent the prospectus was issued, and

any other person who authorised the issue of such prospectus,

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shall be liable to indemnify the person named under paragraph

(a), or whose consent was required under paragraph (b), as

the case may be, against all damages, costs and expenses to

which he may be made liable by reason of his name having

been inserted in the prospectus or of the inclusion therein of

a statement purporting to be made by him as an expert, as the

case may be, or in defending himself against any action or

legal proceeding brought against him in respect thereof :

Provided that a person shall not be deemed for the purposes

of this subsection to have authorised the issue of a prospectus,

by reason only of his having given the consent required under

section 38 to the inclusion in such prospectus of a statement

purporting to be made by him as an expert.

(5) Every person who, by reason of his being a director or

being named as a director or as having agreed to become a

director or of his having authorised the issue of the prospectus

or of the inclusion in such prospectus of a statement

purporting to be made by him as an expert, becomes liable to

make any payment under this section, may recover

contribution as in cases of contract, from any other person

who, if sued separately, would have been liable to make the

same payment, unless the person who has become so liable

was and that other person was not, guilty of fraudulent

misrepresentation.

(6) For the purposes of this section—

(a) “promoter” means a promoter who was a party to

the preparation of the prospectus or of the portion

thereof containing the untrue statement, but does

not include any person by reason of his acting in a

professional capacity for persons engaged in

procuring the formation of the company ; and

(b) “expert” has the same meaning as in section 38.

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42. (1) Where a prospectus issued includes any untrue Criminal liability

statement, any person who authorised the issue of the for untrue

statements in a

prospectus shall be guilty of an offence and be liable on prospectus.

conviction to a fine not exceeding five hundred thousand

rupees or to imprisonment for a term not exceeding two years

or to both to such fine and imprisonment, unless he proves

either that the statement was immaterial or that he had

reasonable ground to believe and up to the time of the issue

of the prospectus did believe, that the statement was true.

(2) A person shall not be deemed for the purposes of this

section to have authorised the issue of a prospectus by reason

only of his having given the consent required by the

provisions of section 38, to the inclusion in such prospectus

of a statement purporting to be made by him as an expert.

(3) No prosecution shall be instituted in respect of any

offence under the provisions of subsection (1), except with

the sanction of the Attorney-General.

43. (1) Where a company allots or agrees to allot any Document

shares in or debentures of the company with a view to offering containing offer

of shares or

all or any of those shares or debentures for sale to the public, debentures for

any document by which the offer for sale to the public is sale to be

made shall for all purposes be deemed to be a prospectus deemed a

prospectus.

issued by the company, and provisions of any written law

which relates to the contents of prospectuses, liability in

respect of statements in and omission from prospectuses or

otherwise generally relating to matters dealing with or

connected to prospectuses, shall apply and have effect

accordingly, as if the shares or debentures has been offered to

the public for subscription and as if persons accepting the

offer in respect of any shares or debentures were subscribers

for those shares or debentures, but without prejudice to the

liability, if any, of the persons by whom the offer is made, in

respect of untrue statements contained in the document or

otherwise in respect thereof.

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(2) For the purposes of this Act, it shall, unless the contrary

is proved, be deemed that an allotment of or an agreement to

allot shares or debentures was made with a view to the shares

or debentures being offered for sale to the public, if it is

shown—

(a) that an offer of the shares or debentures for sale to

the public was made within six months after the

allotment or agreement to allot ; or

(b) that at the date when the offer was made, the whole

consideration to be received by the company in

respect of the shares or debentures had not been so

received.

(3) The provisions of section 40 shall be applicable in

relation to this section, as though the persons making the

offer were persons named in a prospectus as directors of a

company, and the provisions of section 37 shall be applicable

in relation to this section, as if it required a prospectus to

state, in addition to the matters required by that section to be

stated in a prospectus—

(a) the net amount of the consideration received by the

company in respect of the shares or debentures to

which the offer relates ; and

(b) the place and time at which the contract under which

the said shares or debentures have been or are to be

allotted, may be inspected.

(4) Where a person making an offer to which this section

relates is a company or a firm, it shall be sufficient if the

document aforesaid is signed on behalf of the company or

firm by two directors of the company or not less than half of

the partners, as the case may be, and any such director or

partner may sign through his agent authorised in writing.

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44. For purposes of the preceding provisions of this Part Interpretation of

provisions

of this Act—

relating to

prospectuses.

(a) a statement included in a prospectus shall be deemed

to be untrue, if it is misleading in the form and

context in which it is included ; and

(b) a statement shall be deemed to be included in a

prospectus, if it is contained in or in any report or

memorandum appearing on the face of, or by

referrence incorporated in, or issued with, such

prospectus.

ALLOTMENT

45. (1) No allotment shall be made of any share capital Prohibition of

of a company offered to the public for subscription, unless allotment unless

minimum

the amount stated in the prospectus as the minimum amount

subscription is

which in the opinion of the directors must be raised by the received.

issue of share capital in order to provide for the particulars

specified in paragraph 5 of the Fourth Schedule hereto has

been subscribed, and the sum payable on application for the

amount so stated, has been paid to and received by the

company.

For the purposes of this subsection, a sum shall be deemed

to have been paid to and received by the company, if a cheque

for that sum has been received in good faith by the company

and the directors of the company have no reason for suspecting

that the cheque may not be paid.

(2) Where the conditions set out in subsection (1) has not

been complied with within the expiration of sixty days from

the date of closing of the subscription lists, any money

received from applicants for shares shall be forthwith repaid

to them without interest, and if such money is not so repaid

within seventy-five days from the date of closing of the

subscription lists, the directors of the company shall be jointly

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and severally liable to repay that money with interest at the

legal rate, from the expiration of the seventy-fifth day :

Provided that a director shall not be liable if he proves

that the default in the repayment of the money was not due to

any misconduct or negligence on his part.

(3) Any condition requiring or binding any applicant for

shares to waive compliance with any requirement of this

section, shall be void.

(4) The provisions of this section shall not apply to any

allotment of shares subsequent to the first allotment of shares

offered to the public for subscription.

Effect of 46. (1) An allotment made by a company to an applicant

irregular in contravention of the provisions of section 45 shall be

allotment. voidable at the instance of the applicant within one month

from the date of the allotment, and shall be so voidable

notwithstanding that the company is in the course of being

wound up.

(2) Where any director of a company knowingly

contravenes or permits or authorizes the contravention of

any of the provisions of section 45, he shall be liable to

compensate the company and the allotee respectively for

any loss, damages, or costs which the company or the allotee

may have sustained or incurred thereby:

Provided that no proceedings to recover any such loss,

damages, or costs shall be commenced after the expiration of

two years from the date of the allotment.

Applications 47. (1) No allotment shall be made of any shares in or

for and debentures of a company in pursuance of a prospectus issued

allotment of generally and no proceedings shall be taken on applications

shares and

made in pursuance of a prospectus so issued, until the

debentures.

commencement of the third day after the date on which the

prospectus is first issued or such later time (if any) as may be

specified in the prospectus, (hereinafter in this Act referred to

as “the time of the opening of the subscription lists”).

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(2) The reference in subsection (1) to the day on which

the prospectus is first issued generally shall be construed as

referring to the date on which it is first issued as a newspaper

advertisement :

Provided that, if it is not issued as a newspaper

advertisement before the third day after the date on which it

is first issued in any other manner, the said reference shall be

construed as referring to the date on which it is first so issued

in such manner.

(3) The validity of an allotment shall not be affected by

any contravention of the preceding provisions of this section

but, in the event of any such contravention—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding two

hundred thousand rupees; and

(b) every officer of the company who is in default shall

be guilty of an offence and be liable on conviction to

a fine not exceeding one hundred thousand rupees.

(4) In the application of this section to a prospectus offering

shares or debentures for sale, the preceding subsections shall

have effect with the substitution for a reference to allotment

of a reference to sale and for the reference to the company

and every officer of the company who is in default, of a

reference to any person by or through whom the offer is made

and who knowingly and willfully authorises or permits the

contravention.

(5) An application for shares in or debentures of a company

which is made in pursuance of a prospectus issued generally,

shall not be revocable until after the expiration of the third

day from the date of the opening of the subscription lists, or

the giving before the expiration of the said third day, by

some person responsible under the provisions of section 41

for the prospectus, of a public notice having the effect under

that section of excluding or limiting the responsibility of the

person giving it.

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(6) In determining for the purposes of this section the

third day after any day, any intervening day which is a bank

holiday or a public holiday shall be disregarded and where

the third day as so determined is itself a bank or a public

holiday, there shall for the said purposes be substituted the

first day thereafter which is not a bank holiday or a public

holiday.

Construction 48. (1) Any reference in this Act to offering of any shares

of reference or debentures to the public shall, subject to any provision to

to offering

the contrary contained therein, be construed as including a

shares or

debentures to reference to offering them to any section of the public,

the public. whether selected as shareholders or debenture holders of the

company concerned or as clients of the person issuing the

prospectus or in any other manner, and references in this Act

or in a company’s articles to invitations to the public to

subscribe for shares or debentures shall, subject to the

preceding provisions, be similarly construed.

(2) The provisions of subsection (1) shall not be taken as

requiring any offer or invitation to be treated as made to the

public, if it can properly be regarded in all the circumstances

as not being calculated to result directly or indirectly, in the

shares or debentures becoming available for subscription or

purchase by persons other than those receiving the offer or

invitation, or otherwise as being a domestic concern of the

persons making and receiving it, and in particular—

(a) a provision in a company’s articles prohibiting

invitation to the public to subscribe for shares or

debentures shall not be taken as prohibiting the

making to members or debenture holders of an

invitation which can properly be regarded as

aforesaid; and

(b) the provisions of this Act relating to private

companies shall be construed accordingly.

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NATURE AND TYPES OF SHARES

49. (1) A share in a company shall be movable property. Nature and types

of shares.

(2) Subject to the company’s articles, a share in a company

shall confer on the holder —

(a) the right to one vote on a poll at a meeting of the

company on any resolution;

(b) the right to an equal share in dividends paid by the

company;

(c) the right to an equal share in the distribution of the

surplus assets of the company on liquidation.

(3) A company may issue different classes of shares, and

in particular may issue shares which —

(a) are redeemable;

(b) confer preferential rights to distributions; or

(c) confer special, limited or conditional voting rights

or confer no voting rights.

(4) No share in a company shall have a nominal or par

value

(5) A share in a company is transferable in the manner

provided for by its articles and such articles may limit or

restrict the extent to which a share is transferable.

ISSUE OF SHARES

50. (1) Immediately following the incorporation of a Initial shares.

company under section 5, the company shall issue to each

shareholder named in the application for incorporation, the

shares to which that person is entitled.

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(2) Immediately following the issue of a certificate of

amalgamation under section, 244, the amalgamated company

shall issue to each person who is entitled to shares under the

amalgamation proposal, the shares to which that person is

entitled.

Issue of shares. 51. (1) Subject to the provisions of sections 52 and 53

and the company’s articles, the board of a company may

issue such shares to such persons as it considers appropriate.

(2) If the shares issued confer rights other than those set

out in subsection (2) of section 49 or impose any obligation

on the holder, the board shall approve terms of issue which

will set out the rights and obligations attached to those shares.

(3) Terms of issue approved by the board under

subsection(2) —

(a) shall be consistent with the articles of the company,

and to the extent that they are not so consistent, are

invalid and of no effect ;

(b) are deemed to form part of the articles, and may be

amended in accordance with section 15.

(4) Within twenty working days of the issue of any shares

under this section, the company shall —

(a) give notice to the Registrar in the prescribed form of—

(i) the number of shares issued;

(ii) the amount of the consideration for which

the shares have been issued or its value as

determined by the board under subsection(2)

of section 58; and

(iii) the amount of the company’s stated capital

following the issue of the shares;

(b) deliver to the Registrar a copy of any terms of issue

approved under subsection (2).

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(5) Where a company fails to comply with requirements

of subsection (4)—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding fifty

thousand rupees; and

(b) every officer of the company who is in default shall

be guilty of an offence and be liable on conviction

to a fine not exceeding fifty thousand rupees.

52. (1) Before issuing any shares, the board shall — Consideration

for issue of

shares.

(a) decide the consideration for which the shares

will be issued; and

(b) resolve that in its opinion that consideration

is fair and reasonable to the company and to

all existing shareholders.

(2) The consideration for which a share is issued may

take any form, including cash, promissory notes, future

services, property of any kind or other securities of the

company.

(3) Upon receipt of the consideration, the company shall

within a period of twenty days, make an allotment of the shares.

53. (1) Subject to the company’s articles, where a Pre-emptive

company issues shares which rank equally with or above rights to new

existing shares in relation to voting or distribution rights, issues.

those shares shall be offered to the holders of existing shares

in a manner which would, if the offer was accepted, maintain

the relative voting and distribution rights of those

shareholders.

(2) An offer which a company is required to make under

subsection (1), shall remain open for acceptance for a

reasonable period of time.

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Method of 54. (1) A share is deemed to be issued when the name of

issuing shares. the holder is entered on the share register, and such entry

shall be made prior to compliance with subsection (4) of

section 51.

(2) The issue by a company of a share which imposes a

liability to the company on the holder shall be invalid and of

no effect, until such time as the person to whom it is issued

has consented in writing to become the holder of the share.

CALLS ON SHARES

Calls on shares. 55. (1) Where a call is made on a share or any other

obligation attached to a share and is performed by the

shareholder, the company shall within ten working days give

notice to the Registrar in the prescribed form of—

(a) the amount of the call or its value as determined by

the board under subsection (3) of section 58; and

(b) the amount of the stated capital of the company

following the making of the call.

(2) Where a company fails to comply with the requirement

of subsection (1)—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding fifty

thousand rupees; and

(b) every officer of the company who is in default shall

be guilty of an offence and be liable on conviction

to a fine not exceeding fifty thousand rupees.

DISTRIBUTIONS TO SHAREHOLDERS

Distributions. 56. (1) Before a distribution is made by a company to

any shareholder, such distribution shall —

(a) be authorised by the board under subsection (2);

and

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(b) unless the company’s articles provide otherwise, be

approved by the shareholders by ordinary resolution.

(2) The board of a company may authorise a distribution

at such time and in such amount as it considers appropriate,

where it is satisfied that the company will, immediately after

the distribution is made satisfy the solvency test, provided

that such board obtains a certificate of solvency from the

auditors.

(3) The directors who vote in favour of a distribution

shall sign a certificate setting that in their opinion, the

company will satisfy the solvency test immediately after the

distribution is made.

(4) In applying the solvency test for the purposes of this

section, “debts” includes fixed preferential returns on shares

ranking ahead of those in respect of which a distribution is

made, except where the fixed preferential return is expressed

to be subject to the power of the board to authorise

distributions.

(5) A director who fails to comply with the requirements

of subsection (2) shall be guilty of an offence and be liable

on conviction to a fine not exceeding two hundred thousand

rupees.

57. (1) A company shall be deemed to have satisfied Solvency test.

the solvency test, if—

(a) it is able to pay its debts as they become due in the

normal course of business; and

(b) the value of the company’s assets is greater than —

(i) the value of its liabilities; and

(ii) the company’s stated capital.

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(2) In determining whether a company satisfies the

solvency test, the board—

(a) shall take into account the most recent financial

statements of the company prepared in accordance

with section 151 of the Act ;

(b) shall take into account circumstances the directors

know or ought to know which affect the value of the

company’s assets and liabilities ;

(c) may take into account a fair valuation or other

method of assessing the value of assets and

liabilities.

Stated capital. 58. (1) Subject to section 59, stated capital in relation

to a company means the total of all amounts received by the

company or due and payable to the company —

(a) in respect of the issue of shares; and

(b) in respect of calls on shares.

(2) Where a share is issued for consideration other than

cash, the board shall determine the cash value of such

consideration for the purposes of subsection (1).

(3) Where a share has attached to it an obligation other

than an obligation to pay calls, and that obligation is

performed by the shareholder—

(a) the board shall determine the cash value, if any, of

that performance; and

(b) the cash value of that performance shall be deemed

to be a call which has been paid on the share for the

purposes of subsection (1).

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59. (1) Subject to the provisions of subsection (3), a Reduction of

company may by special resolution reduce its stated capital stated capital.

to such amount as it thinks appropriate, in accordance with

the provisions of this Act.

(2) Public notice of a proposed reduction of a company’s

stated capital shall be given not less than sixty days before

the resolution to reduce stated capital is passed.

(3) A company may agree in writing with a creditor of the

company, that it will not reduce its stated capital below a

specified amount without the prior consent of the creditor or

unless specified conditions are satisfied at the time of the

reduction. A resolution to reduce sated capital passed in breach

of any such agreement, shall be invalid and of no effect.

(4) Where —

(a) a share is redeemed at the option of the shareholder

under section 68 or on a fixed date under section

69; or

(b) the company purchases a share under section 95,

and the board is satisfied that as a consequence of the

redemption or purchase, the company would but for this

subsection, fail to satisfy the solvency test—

(c) the board shall after obtaining the auditors

certificate of solvency, resolve that the stated capital

of the company shall be reduced by the amount by

which the company would so fail to satisfy the

solvency test; and

(d) the resolution of the board shall have effect

notwithstanding provisions contained in subsection

(1) to subsection (3) of this section.

(5) A company which has reduced its stated capital shall

within ten working days of such reduction, give notice of the

reduction to the Registrar, specifying the amount of the

reduction and the reduced amount of its stated capital.

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(6) Where company fails to comply with requirements of

subsection (2) or subsection (5)—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding fifty

thousand rupees; and

(b) every officer of the company who is in default shall

be guilty of an offence and be liable on conviction

to a fine not exceeding fifty thousand rupees.

Dividends. 60. (1) A dividend is a distribution out of profits of the

company, other than an acquisition by the company of its

own shares or a redemption of shares by the company.

(2) The board of a company shall not authorise a dividend

in respect of some shares in a class and not others of that class

or of a greater amount in respect of some shares in a class than

other shares in that class, except where—

(a) the amount of the dividend is reduced in proportion

to any liability attached to the shares under the

company’s articles; or

(b) a shareholder has agreed in writing to receive no

dividend or a lesser dividend than would otherwise

be payable.

Recovery of 61. (1) A distribution made to a shareholder at a time

distributions. when the company did not, immediately after the distribution,

satisfy the solvency test, may be recovered by the company

from the shareholder, unless—

(a) the shareholder received the distribution in good

faith and without knowledge of the company’s failure

to satisfy the solvency test;

(b) the shareholder has altered his position in relying

on the validity of the distribution; and

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(c) it would be unreasonable in view of the

circumstances to require repayment in full at all.

(2) Where in relation to a distribution to which subsection

(1) applies, the procedure set out in section 56 has not been

followed or reasonable grounds for believing that the

company would satisfy the solvency test did not exist at the

time the certificate was signed, every director who—

(a) failed to take reasonable steps to ensure the

procedure was followed; or

(b) signed the certificate,

as the case may be, shall be personally liable to the company

to repay to the company, so much of the distribution as the

company is not able to recover from the shareholders.

(3) Where in an action brought against a director or a

shareholder under this section, the court is satisfied that the

company could by making a distribution of a lesser amount

have satisfied the solvency test, the court may—

(a) permit the shareholder to retain; or

(b) relive the director from liability in respect of,

an amount equal to the value of any distribution that could

properly have been made.

62. (1) Where a company— Reduction of

shareholder

liability to be a

(a) alters its articles; or

distribution.

(b) acquires shares issued by it or redeems shares under

section 67,

in a manner which cancels or reduces the liability of a

shareholder to the company in relation to a share held prior

to that alteration, acquisition, or redemption, as the case may

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be, the cancellation or reduction of liability shall be treated,

for the purposes of subsection (1) and subsection (3) of section

61, as if it were a distribution of the amount by which the

liability was reduced.

(2) Where the liability of a shareholder of an

amalgamating company to that company in relation to a share

held before the amalgamation, is—

(a) greater than the liability of that shareholder to the

amalgamated company in relation to a share or

shares into which that share is converted; or

(b) cancelled by the cancellation of that share in the

amalgamation,

the reduction of liability effected by the amalgamation shall

be treated for the purposes of subsection (1) and subsection

(3) of section 61, as a distribution by the amalgamated

company to that shareholder of the amount by which that

liability was reduced.

RE-PURCHASE OF SHARES

Company may 63. (1) A company may purchase or otherwise acquire

acquire or any of its own shares —

redeem its own

shares.

(a) under section 64 or section 67;

(b) if the company is a private company, with the

agreement or concurrence of all shareholders under

section 31; or

(c) in accordance with an order made by the court under

this Act,

but not otherwise.

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(2) A company may redeem a share which is a redeemable

share, in accordance with the provisions of sections 66 to 69,

but not otherwise.

(3) A share that is acquired or redeemed by the company

shall be deemed to be cancelled immediately upon

acquisition or redemption, as the case may be.

(4) Immediately following the acquisition or redemption

of shares by the company, the company shall give notice to

the Registrar of the number and class of shares acquired or

redeemed, as the case may be.

(5) Where a company fails to comply with

subsection(4)—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding fifty

thousand rupees; and

(b) every officer of the company who is in default shall

be guilty of an offence and be liable on conviction

to a fine not exceeding fifty thousand rupees.

64. (1) A company may agree to purchase or otherwise Purchase of own

acquire its own shares if the articles of such company provide shares.

for it to do so, with the approval of the board.

(2) Before a company offers or agrees to purchase its own

shares, the board of such company shall resolve that —

(a) the acquisition is in the interests of the company;

(b) the terms of the offer or agreement and the

consideration to be paid for the shares is in the

opinion of the company’s auditors a fair value; and

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(c) it is not aware of any information that has not been

disclosed to shareholders which is material to an

assessment of the value of the shares, and as a result

of which the terms of an offer or the consideration

offered for the shares are unfair to shareholders

accepting the offer.

(3) Before the company—

(a) makes and offer to acquire shares other than in a

manner which will if it is accepted in full, leave

unaffected the relative voting and distribution rights

of all shareholders; or

(b) agrees to acquire shares other than in a manner which

leaves unaffected the relative voting and distribution

rights of all shareholders,

the board shall resolve that the making of the offer or entry

into the agreement, as the case may be, is fair to those

shareholders to whom the offer is not made or with whom no

agreement is entered into.

Enforceability 65. (1) A contract with a company providing for the

of contract to acquisition by the company of its shares shall be specifically

purchase

shares. enforceable against the company, except to the extent that

the company would after performing the contract fail to satisfy

the solvency test, and the burden of proving that after the

performance of the contract it would be unable to satisfy the

solvency test, shall be on the company.

(2) Until the company has fully performed a contract

referred to in subsection (1), the other party to the contract

retains the status of a claimant entitled to be paid as soon as

the company is lawfully able to do so or, in the event of a

liquidation, to be ranked subordinate to the rights of creditors,

but in priority to the other shareholders.

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REDEMPTION OF SHARES

66. For the purposes of this Act, a share is redeemable if Meaning of

the articles of the company make provision for the redemption “redeemable”.

of that share by the company —

(a) at the option of the company;

(b) at the option of the holder of the share; or

(c) on a date specified in the articles,

for a consideration that is specified or to be calculated by

reference to a formula or required to be fixed by a suitably

qualified person who is not associated with or interested in

the company.

67. (1) A company may exercise an option to redeem a Redemption

share which is redeemable at the option of the company, if option of

company.

the board has previously resolved that the redemption is in

the interest of the company.

(2) A redemption of a share at the option of the company

is deemed to be—

(a) an acquisition by the company of the share, for the

purposes of subsection (3) of section 64; and

(b) a distribution for the pruposes of seciton 56.

68. (1) Where a share is redeemable at the option of the Redemption at

holder of the share and the holder gives proper notice to the the option of the

shareholder.

company requiring the company to redeem the share—

(a) the company shall redeem the share on the date

specified in the notice or if no date is specified, on

the date of receipt of the notice;

(b) the share is deemed to be cancelled on the date of

redemption; and

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(c) from the date of redemption, the former shareholder

ranks as an unsecured creditor of the company for

the sum payable on redemption.

(2) A redemption under this section is not a distribution

for the purposes of section 56, but is deemed to be a

distribution for the purposes of subsection (1) and subsection

(3) of section 61.

Redemption on 69. (1) Where a share is redeemable on a specified

fixed date. date—

(a) the company shall redeem the share on that date;

(b) the share is deemed to be cancelled on that date;

and

(c) from that date, the former shareholder ranks as an

unsecured creditor of the company for the sum

payable on redemption.

(2) A redemption under this section is not a distribution

for the purposes of section 56, but is deemed to be a

distribution for the purposes of subsection (1) and subsection

(3) of section 61.

FINANCIALASSISTANCE IN CONNECTION WITH PURCHASE OF SHARES

Restrictions on 70. (1) A company shall not give financial assistance

giving financial directly or indirectly for the purpose of or in connection with

assistance. the acquisition of its own shares, other than in accordance

with this section.

(2) Notwithstanding the provisions of subsection (1), a

company may give financial assistance for the purpose of or

in connection with the acquisition of its own shares, if the

board has previously resolved that —

(a) giving such assistance is in the interest of the

company;

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(b) the terms and conditions on which the assistance is

given are fair and reasonable to the company and to

any share holders not receiving that assistance; and

(c) immediately after giving the assistance, the company

will satisfy the solvency test.

(3) Where the amount of any financial assistance

approved under subsection (2) together with the amount of

any other financial assistance given by the company which

is still outstanding, exceeds ten per centum of the company’s

stated capital, the company shall not give the assistance unless

it first obtains from its auditor or if it does not have an auditor

from a person qualified to act as its auditor, a certificate to the

effect that—

(a) he has inquired into the state of affairs of the

company; and

(b) he is not aware of anything to indicate that the

opinion of the board that the company will,

immediately after giving the assistance satisfy the

solvency test, is unreasonable in all the

circumstances.

(4) The giving of financial assistance under this section

is not a distribution for the purposes of section 56.

(5) Where a company acts in contravention of the

provisions of this section, every officer of the company who

is in default shall be guilty of an offence and be liable on

conviction to a fine not exceeding one million rupees or to a

term of imprisonment not exceeding five years or to both

such imprisonment and fine.

71. (1) The provisions of section 70 shall not apply to Transactions not

the giving of financial assistance by a company for the prohibited by

purpose of or in connection with the acquisition of its own section 70.

shares, if—

(a) the company’s principal purpose in giving the

assistance is not to give it for the purpose of that

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acquisition or the giving of the assistance is an

incidental part of any other larger purpose of the

company; and

(b) the assistance is given in good faith in the interest

of the company.

(2) The provisions of section 70 shall also not apply in

respect of—

(a) a distribution to a shareholder approved under

section 56;

(b) the issue of shares by the company;

(c) a repurchase or redemption of shares by the

company;

(d) anything done in terms of a compromise reached

under the provisions of Part IX or a compromise or

arrangement approved under the provisions of

PartX;

(e) the lending of money by a company in the

ordinary course of business, where the ordinary

business of the company includes the lending of

money;

(f) the provision by a company in good faith in the

interest of the company, of financial assistance for

the purposes of an employees’ share scheme;

(g) the granting of loans by a company to its employees

other than directors in good faith in the interest of

the company, with a view to enabling those persons

to acquire beneficial ownership of shares in the

company.

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CROSS-HOLDINGS

72. (1) A company which is a subsidiary of another Restriction on

company (referred to in this section as the “holding subsidiary

company”)— holding shares in

holding

company.

(a) shall not acquire shares in the holding company;

(b) may continue to hold any shares in the holding

company acquired by the subsidiary before it

became a subsidiary of the holding company, but

may not exercise any right to vote which is attached

to those shares.

(2) Nothing in subsection (1) shall apply to a company

which —

(a) holds shares in the holding company only as a

trustee or legal representative and has no beneficial

interest in the shares; or

(b) holds an interest in shares in the holding company

by way of security for the purposes of a transaction

entered into by it in the ordinary course of business

and on usual terms and conditions.

(3) Where a body corporate—

(a) became a holder of shares in the holding company

before the commencement of this Act, it may

continue to be a member of that company, but it has

no right to vote in respect of those shares at any

meetings of the company; and

(b) is permitted to continue as a member of the holding

company by virtue of paragraph (b) of subsection

(1) and paragraph (a) of this subsection, an allotment

of fully paid shares in the company may be validly

made by way of capitalisation of reserves of the

company, which shares also will have no right to

vote.

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(4) The provisions of subsections (1), (2) and (3) shall

apply in relation to a nominee for a company which is a

subsidiary, as if a reference to the company were a reference

to the nominee.

TRANSFER OF SHARES AND DEBENTURES, EVIDENCE OF TITLE &C.

Transfer not to 73. Notwithstanding anything to the contrary in the

be registered articles of a company, it shall not be lawful for the company

except on to register a transfer of shares in or debentures of the company,

production of unless a proper instrument of transfer has been delivered to

instrument of

the company:

transfer.

Provided that, nothing in this section shall affect any power

of the company to register as shareholder or debenture holder,

any person to whom the right of any shares in or debentures

of the company has been transmitted by operation of law.

Transfer by 74. A transfer of the shares or other interests of a deceased

legal shareholder of a company made by his legal representative

representative. shall, although the legal representative is not himself a

shareholder of the company, be as valid as if he had been

such a shareholder at the time of the execution of the

instrument of transfer.

Registration of 75. On the application of the transferor of any share or

transfer at the other interest in a company, the company shall enter in its

request of share register the name of the transferee in the same manner

transferor.

and subject to the same conditions, as if the application for

the entry were made by the transferee.

Notice of refusal 76. (1) Where a company refuses to register a transfer of

to register any shares or debentures, the company shall within two

transfer. months from the date on which the transfer was lodged with

the company, send to the transferee a notice of such refusal.

(2) Where a company fails to comply with the provisions

of subsection (1)—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding fifty

thousand rupees; and

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(b) every officer of the company who is in default shall

be guilty of an offence and be liable on conviction

to a fine not exceeding fifty thousand rupees.

77. (1) The certification by a company of any instrument Certification of

of transfer of shares in or debentures of the company shall be transfers.

taken as a representation by the company to any person acting

on the faith of such certification, that there have been

produced to the company such documents as on the face of

there show a prima facie title to the shares or debters in the

transferor named in the instrument of transfer, but not as a

representation that the transferor has any title to the shares or

debentures.

(2) Where any person acts on the faith of a false

certification made by a company negligently, the company

shall be under the same liability to him as if the certification

had been made fraudulently.

(3) For the purposes of this section —

(a) an instrument of transfer shall be deemed to be

certified if it bears the words “certificate lodged” or

words to the like effect;

(b) the certification of an instrument of transfer shall be

deemed to be made by a company, where —

(i) the person issuing the instrument is a person

authorised to issue certificated instruments of

transfer on the company’s behalf; and

(ii) the certification is signed by a person authorised

to certify transfers on the company’s behalf or

by an officer or servant either of the company

or of a body corporate so authorised ;

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

person where —

(i) it purports to be authenticated by his signature

or initials, whether handwritten or not; and

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(ii) it is not shown that the signature or initials

was or were placed there neither by himself

nor by any person authorised to use the

signature or initials for the purpose of

certifying transfers on the company’s behalf.

Duties of 78. (1) Every company shall within two months from

company with the date of allotment of any of its shares, debentures or

respect to issue debenture stock and within two months from the date on

of certificates.

which a transfer of any such shares, debentures or debenture

stock, is lodged with the company, complete and have ready

for delivery the certification of all shares, the debentures,

and the certificates of all debenture stock allotted or

transferred, unless the conditions of issue of the shares,

debentures, or debenture stock provide otherwise.

For the purposes of this subsection the expression

“transfer” means a transfer duly stamped and otherwise valid

and does not include a transfer which the company is for any

reason entitled to refuse to register and does not register.

(2) Where a company fails to comply with the requirements

of subsection (1)—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding fifty

thousand rupees; and

(b) every officer of the company who is in default shall

be guilty of an offence and be liable on conviction

to a fine not exceeding fifty thousand rupees.

(3) Where any company on whom a notice has been served

requiring the company to make good any default in

complying with the provisions of subsection (1), fails to make

good the default within ten days from the date of service of

the notice, the court may on the application of the person

entitled to have the certificates or the debentures delivered

to him, make an order directing the company and any officer

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of the company, to make good the default within such time as

may be specified in the order and any such order may provide

that all costs of and incidental to the application shall be

borne by the company or any officer of the company

responsible for the default.

79. A certificate signed under the name of the company Certificate to be

by a director and secretary of the company specifying any evidence of title.

shares held by any shareholder, shall be prima facie evidence

of the title of the shareholder to the shares.

80. The production to a company of any document which Evidence of

by law is sufficient evidence of probate of a will or of letters grant of probate,

&c.

of administration of the estate or confirmation as executor of

a deceased person having been granted to some person, shall

be accepted by the company notwithstanding anything in its

articles, as sufficient evidence of the grant.

SPECIAL PROVISIONS AS TO DEBENTURES

81. (1) Every company which has issued debentures Right of

shall maintain a register of holders of debentures of the debenture

holders and

company. The register shall, except when duly closed (but

shareholders to

subject to such reasonable restrictions the company may inspect register

impose at a general meeting so that not less than two hours in of debenture

each day shall be allowed for inspection), be opened for the holders and to

have copies of

inspection by the registered holder of any such debentures or

any trust deed.

any holder of shares in the company without a fee, and by

any other person on payment of a fee of ten rupees or such

lesser sum as may be specified by the company.

(2) For the purposes of subsection (1), a register shall be

deemed to be duly closed if closed in accordance with the

provisions contained in the company’s articles or in the

debentures, or in the case of debenture stock, in the stock

certificates or in the trust deed or other document securing

the debentures or debenture stock, during such period or

periods not exceeding in the whole thirty days in any year, as

may be therein specified.

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(3) Any registered holder of the debentures or holder of

shares as aforesaid or any other person, may require a copy of

the register of the holders of debentures of the company or

any part thereof to be furnished on payment of a sum not

exceeding ten rupees for every page required to be copied.

(4) A copy of any trust deed for securing an issue of

debentures shall be forwarded to every holder of any such

debentures at his request, on payment in the case of a printed

trust deed of the sum of ten rupees or such lesser sum as may

be specified by the company, or where the trust deed has not

been printed, on payment of a sum not exceeding one rupee

for every hundred words required to be copied.

(5) Where inspection of the register is refused or a copy

as aforesaid is refused or not forwarded—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding fifty

thousand rupees; and

(b) every officer of the company who is in default shall

be guilty of an offence and be liable on conviction

to a fine not exceeding fifty thousand rupees.

(6) Where a company is in default as referred to in

subsection (5), the court may also by order compel an

immediate inspection of the register or direct that any copy

required as aforesaid shall be sent to the person requiring

them.

Directors 82. A director of a company shall not be capable of being

prohibited from appointed as a trustee for the holders of debentures of the

acting as company:

trustees.

Provided that the provisions of this section shall not apply

to any director of a company who holds office as a trustee for

the holders of debentures of the company, by virtue of an

appointment made on or before July 2, 1982, and accordingly

any such director may continue in office as trustee until the

termination of that appointment.

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83. A condition contained in any debentures or in any Perpetual

debentures.

deed for securing any debentures whether issued or executed

before or after the appointed date, shall not be invalid by

reason only of the fact that the debentures are thereby made

irredeemable or redeemable only on the happening of a

contingency, however remote, or on the expiration of the

period, however long.

84. (1) Where a company has redeemed any debentures Power to reissue

previously issued, then— redeemed

debentures in

certain cases.

(a) unless any provision to the contrary, whether express

or implied, is contained in the company’s articles or

in any contract entered into by the company; or

(b) unless the company has by passing a resolution to

that effect or by some other act, manifested its

intention that the debentures shall be cancelled,

the company shall have and shall be deemed always to have

had, power to reissue the debentures, either by reissuing the

same debentures or by issuing other debentures in their place.

(2) On a reissue of redeemed debentures, the person

entitled to the debentures shall have and shall be deemed

always to have had the same priorites as if the debentures had

never been redeemed.

(3) Where a company has deposited any of its debentures

to secure advances from time to time on current account or

otherwise, the debentures shall not be deemed to have been

redeemed by reason only of the account of the company

having ceased to be in debit, whilst the debentures remained

so deposited.

(4) The reissue of a debenture or the issue of another

denenture in its place under the power by this section given

to or deemed to have been possessed by a company, shall be

treated as the issue of a new debenture for the purposes of

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stamp duty. But it shall not be so treated for the purposes of

any provision limiting the amount or number of debentures

to be issued :

Provided that any person lending money on the security

of a debenture reissued under the provisions of this section

which appears to be duly stamped, may give the debenture in

evidence in any proceedings for enforcing his security

without payment of the stamp duty or any penalty in respect

thereof, unless he had notice or but for his negligence might

have discovered, that the debenture was not duly stamped. In

any such case the company shall be liable to pay the proper

stamp duty and penalty.

(5) The re-issue after the appointed date of debentures

redeemed before that date, shall not prejudice any right or

priority wihch any person would have had under or by virtue

of any mortgage or charge created before that date.

Specific 85. A contract with a company to take up and pay for

performance of any debentures of the company may be enforced by an order

contracts to

subscribe for for specific performance.

debentures.

PART V

SHAREHOLDERS ANDTHEIR RIGHTSAND OBLIGATIONS

Meaning of 86. (1) In this Act, the term “shareholder” means—

“shareholder”.

(a) a person whose name is entered in the share register

as the holder for the time being of one or more shares

in the company ;

(b) until a person’s name is entered in the share register,

a person named as a shareholder in an application

for incorporation of a company at the time of

registration of the company ;

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(c) until a person’s name is entered in the share register,

a person who is entitled to have that person’s name

entered in the share register under a registered

amalgamation proposal as a shareholder in an

amalgamated company ;

(d) until a person’s name is entered in the share register,

a person to whom a share has been transferred and

whose name ought to be but has not been entered in

the register.

(2) Where a notice of any trust has been entered in the

share register in respect of any shares in a company under

subsection (2) of section 129, the person for whose benefit

those shares are held in trust—

(a) shall be deemed to be a shareholder in the company;

and

(b) shall in respect of those shares, enjoy all such rights

and privileges and be subject to all such duties and

obligations under this Act, as if his name had been

entered in the share register as the holder of those

shares.

(3) Where a company has wrongfully failed to enter in the

share register the name of a person to whom shares have been

transfered, that person—

(a) shall be deemed to be a shareholder in the company;

and

(b) shall in respect of those shares, enjoy all such rights

and privileges and be subject to all such duties and

obligations under this Act, as if his name had been

entered in the share register as the holder of those

shares.

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LIABILITYOF SHAREHOLDERS

Liability of 87. (1) A shareholder shall not be liable for any act,

shareholder. default or an obligation of the company, by reason only of

being a shareholder.

(2) The liability of a shareholder to the company is limited

to any liability expressly provided for in the articles of the

company or under this Act.

(3) Nothing in this section shall effect the liability of a

shareholder to a company under a contract including a

contract for the issue of shares, or for any tort or breach of a

fiduciary duty or other actionable wrong committed by the

shareholder.

Liability for 88. (1) Subject to section 269, where a share renders its

calls. holder liable to calls or otherwise imposes a liability on its

holder, that liability shall attach to the holder of the share for

the time being and not to a former holder of the share, whether

or not the liability became enforceable before the share was

registered in the name of the current holder.

(2) Where—

(a) all or part of the consideration payable in respect of

the issue of a share remains unsatisfied ; and

(b) the person to whom the share was issued no longer

holds that share,

liability in respect of that unsatisfied considerations shall

not attach to subsequent holders of the share, but shall remain

the liability of the person to whom the share was issued or of

any other person who assumed that liability at the time of

issue.

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89. Notwithstanding anything to the contrary in the Shareholders

articles of the company, a shareholder shall not be— must agree to

increase in

liability.

(a) bound by a resolution altering its articles ; or

(b) required to acquire or hold more shares in the

company,

where that resolution or the holding of those shares would

increase the liability of the shareholder to the company, unless

the shareholder agrees in writing to be bound by the

resolution or to accept the shares, as the case may be.

POWERS OF SHAREHOLDERS

90. (1) Powers reserved to the shareholders of a Exercise of

company by this Act may be exercised only— powers reserved

to shareholders.

(a) at a meeting of shareholders ; or

(b) by a resolution in lieu of a meeting in terms of

section 144.

(2) Powers reserved to the shareholders of a company by

the articles of the company may subject to the articles, be

exercised—

(a) at a meeting of shareholders ; or

(b) by a resolution in lieu of a meeting pursuant to

section 144.

91. Unless otherwise provided by this Act or in the Exercise of

articles of a company, a power reserved to shareholders may powers by

ordinary

be exercised by an ordinary resolution.

resolution.

92. (1) Notwithstanding anything to the contrary Powers exercised

contained in the articles of a company, when shareholders by special

exercise a power to— resolution.

(a) alter the company’s articles ;

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(b) approve a major transaction for the purpse of

paragraphs (a) or (b) of subsection (1) of section

185 of this Act;

(c) approve an amalgamation of the company under

section 241 of this Act ;

(d) reduce the company’s stated capital ;

(e) resolve that the company be wound up voluntarily

in terms of paragraph (b) or (c) of suchection (1) of

section 319 of this Act;

(f) change the name of a company ; or

(g) change the status of a company,

such powers shall be exercised by special resolution.

(2) A special resolution passed in relation to a power

referred to in paragraph (a), paragraph (b) or paragraph (c) of

subsection (1), may be rescinded only by another special

resolution.

(3) A special resolution passed in relation to a power

referred to in paragraph (d) or paragraph (e) of subsection (1),

cannot be rescinded thereafter.

MINORITY BUY-OUT RIGHTS

Shareholder 93. Where a shareholder is entitled to vote on the

may require exercise of the power set out in paragraph (a) of subsection

company to (1) of section 92 and the proposed alteration imposes or

purchase shares.

removes a restriction on the business or activities in which

the company may engage, or set out in paragraph (b) or (c) of

subsection (1) of section 92, and the shareholder resolved to

exercise those powers , and-

(a) the shareholder cast all the votes attached to shares

registered in the shareholder’s name and having the

same beneficial owner against the exercise of the

power ; or

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(b) where the resolution to exercise the power was

passed under section 144, the shareholder did not

sign the resolution in respect of the shares registered

in the shareholder’s name and having the same

beneficial owner,

that shareholder shall be entitled to require the company to

purchase those shares in accordance with section 94.

94. (1) A shareholder of a company who is entitled to Notice requiring

require the company to purchase shares by virtue of the purchase.

provisions of section 93 or section 100 may—

(a) within ten working days of the passing of the

resolution at a meeting of shareholders ; or

(b) where the resolution was passed under section 144,

before the expiration of ten working days after the

date on which notice of the passing of the resolution

is given to the shareholder,

give a written notice to the company, requiring the company

to purchase those shares.

(2) Within twenty working days of receiving a notice under

subsection (1), the board shall—

(a) agree to the purchase of the shares by the company;

(b) arrange for some other person to agree to purchase

the shares ;

(c) apply to the court for an order under section 97 or

section 98 ; or

(d) arrange before taking the action concerned for the

resolution to be rescinded in accordance with

section 92 or decide in the appropriate manner not

to take the action concerned, as the case may be,

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and give written notice to the shareholder of the board’s

decision under this subsection.

Purchase by 95. (1) Where the board agree under paragraph (a) of

company. subsection (2) of section 94 to the purchase of the shares by

the company, it shall, on giving notice under that subsection

or within five working days of doing so—

(a) nominate a fair and reasonable price for the shares

to be acquired ; and

(b) give notice of the price nominated to the holder of

those shares.

(2) The shares are deemed to have been purchased by the

company upon receipt by the shareholder of a notice under

susection (1).

(3) A shareholder who considers that the price nominated

by the board is not fair or reasonable, shall forthwith give a

notice of objection to the company.

(4) If within ten working days of giving notice to a

shareholder under subsection (1), no objection to the price

has been received by the company—

(a) the company shall forthwith pay the price nominated

to the shareholder ; and

(b) the shareholder shall forthwith deliver any share

certificate in respect of the shares to the company.

(5) If within ten working days of giving notice to a

shareholder under subsection (1), an objection to the price

has been received by the company, the company shall within

five working days—

(a) refer the question as to what amounts to a fair and

reasonable price to the auditors of the company ;

and

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(b) pay a provisional price in respect of the shares, equal

to the price nominated by the board.

Upon payment of the provisional price by the company,

the shareholder shall forthwith deliver any share certificate

in respect of the shares to the company.

(6) Where a reference is made under paragraph (a) of

subsection 5, the auditor shall expeditiously determine a fair

and reasonable price for the shares to be purchased.

(7) Where the price determined under subsection (6)—

(a) exceeds the provisional price already paid, the

company shall forthwith pay the balance owing to

the shareholder ; or

(b) is less than the provisional price already paid, the

shareholder shall forthwith repay the excess to the

company.

(8) The auditors may determine the interest on any balance

payable or excess to be repaid under subsection (7) at such

rate as they think fit, having regard to whether the provisional

price paid was reasonable.

(9) Where the company fails to refer the question to the

auditors under paragraph (a) of subsection (5), a shareholder

who has given notice of objection under subsection (3) and a

shareholder not satisfied with the price as determined under

subsection (6), may apply to court to appoint a fit and proper

person for the purposes of determining a fair and reasonable

price for the shares and the court may appoint such person as

it thinks fit. A person so appointed by court may award

interest according to the provisions of subsection (8).

(10) A purchase of shares by a company under this section

is deemed not to be a distribution for the purposes of section

56, but is deemed to be a distribution for the purposes of

subsections (1) and (3) of section 61.

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Purchase of 96. (1) The provisions of section 95 shall apply to the

shares by third purchase of shares by a person with whom the company has

party.

entered into an arrangement for the purchase in accordance

with the provisions of paragraph (b) of subsection (2) of section

94, subject to such modifications as may be necessary, and in

particular as if references in that section to the board and the

company were references to that person.

(2) Every holder of shares that are to be purchased in

accordance with the arrangement, shall be indemnified by

the company in respect of any loss that may be suffered by

such holder due to the failure by the person who has agreed

to purchase the shares to purchase them at the price nominated

or as determined under subsections (6) or (9) of section 95, as

the case may be.

Court may grant 97. (1) A company to which a notice has been given

exemption. under section 94 may apply to court for an order exempting

it from the obligation to purchase the shares to which the

notice relates, on the ground that—

(a) the purchase would be disproportionately damaging

to the company ; or

(b) the company cannot reasonably be required to

finance the purchase.

(2) On an application made under this section, the court

may make an order exempting the company from the

obligation to purchase the shares, and may make any other

order it thinks fit, including an order—

(a) setting aside a resolution of the shareholders ;

(b) directing the company to take or refrain from taking,

any action specified in the order ;

(c) requiring the company to pay compensation to the

shareholders affected ; or

(d) that the company be wound up by the court.

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(3) The court shall not make an order under subsection

(2) of this section, unless it is satisfied that the company has

made reasonable efforts to arrange for another person to

purchase the shares in accordance with paragraph (b) of

subsection (2) of section 94.

98. (1) Where a notice is given to a company under Court may grant

section 94, and— exemption if

company is

insolvent.

(a) the board considers that after the purchase by the

company of the shares, the company would fail to

satisfy the solvency test ; and

(b) the company has made reasonable efforts to arrange

for the shares to be purchased by another person in

accordance with the provisions of paragraph (b) of

subsection (2) of section 94, but has been unable to

do so,

the company shall apply to the court for an order exempting

it from the obligation to purchase those shares.

(2) The court may on an application made under

subsection (1) and where it is satisfied that after the purchase

of the shares the company would fail to satisfy the solvency

test and the compnay has made reasonable efforts to arrange

for the shares to be purchased by another person in accordance

with paragraph (b) of subsection (2) of section 94, make—

(a) an order exempting the company from the obligation

to purchase the shares ;

(b) an order suspending the obligation to purchase the

shares ; or

(c) such other order as it thinks fit, including any order

referred to in subsection (2) of section 97.

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(3) For the purposes of this section, the stated capital of a

company shall not be taken into account in determining

whether the company will after the purchase, fail to satisfy

the solvency test.

Alteration of 99. (1) A company shall not take any action that would

shareholder affect the rights attached to shares, unless that action has

rights.

been approved by a special resolution of each interest group.

(2) For the purposes of this section, the rights attached to

a share include—

(a) the rights, privileges, limitations, and conditions

attached to the share under this Act or the articles of

the company, including voting rights and rights to

distributions ;

(b) pre-emptive rights under section 53 ;

(c) the right to have the procedure set out in this section,

and any further procedure required by the articles of

the company for the amendment or alteration of the

articles, observed by the company ; and

(d) the right that a procedure required by the articles of

the company for the amendment or alteration of the

articles, not be amended or altered.

Shareholder 100. Where an interest group has approved the taking

may require of any action that affects the rights attached to shares and the

company to company becomes entitled to take that action, and—

purchase shares.

(a) a shareholder who was a member of the interest group

cast all the votes attached to the shares registered in

that shareholder’s name and having the same

beneficial owner against approving the action ; or

(b) where the resolution approving the taking of the

action was passed under section 144, a shareholder

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who was a member of the interest group did not sign

the resolution in respect of the shares registered in

that shareholder’s name and having the same

beneficial owner,

such shareholder shall be entitled to require the company to

purchase those shares in accordance with section 94.

101. The taking of any action by a company affecting Action not

the rights attached to shares shall not be invalid by reason invalid.

only that the action was not approved under section 99.

PART VI

REGISTRATION OF CHARGES

REGISTRATION OF CHARGES WITH REGISTRAR

102. (1) Where a company creates a charge to which Registration of

this section applies, it shall be the duty of the company within charges created

by companies

the time specified in subsection (3), to cause a copy of the

registered in Sri

instrument by which the charge is created or evidenced, to be Lanka.

delivered to the Registrar for registration under this Act. The

copy of the instrument shall be accompanied by a certificate

in the prescribed form issued by a director or secretary of the

company or an attorney-at law, verifying the copy as a true

copy and containing the prescribed particulars of the charge.

(2) This section shall apply to the following charges :—

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

debentures ;

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

(c) a charge created or evidenced by an instrument

which, if executed by an individual, would require

registration as a bill of sale ;

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(d) a charge on land wherever situated, or on any interest

in land ;

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

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

the company ;

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

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

aircraft ;

(i) a charge on goodwill or intellectual property within

the meaning of the Intellectual Property Act, No. 36

of 2003 ; and

(j) a trust receipt to which section 4 of the Trust Receipts

Ordinance (Cap. 86) applies or an inland trust receipt

within the meaning of the Inland Trust Receipts

Act, No. 14 of 1990.

(3) An instrument which is required to be registered under

this section shall—

(a) in the case of instruments executed in Sri Lanka, be

registered within twenty-one working days of the

date of execution of the instrument ; or

(b) in the case of an instrument executed outside Sri

Lanka, be registered within three months of the date

of execution of the instrument.

(4) Where a charge is created in Sri Lanka but comprises

of property outside Sri Lanka, the instrument creating or

purporting to create the charge may be sent for registration

under the provisions of this secetion, notwithstanding that

further proceedings may be necessary to make the charge

valid or effectual according to the law of the country in which

the property is situated.

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(5) Where a negotiable instrument has been given to

secure the payment of any book debts of a company, the

deposit of the instrument for the purpose of securing an

advance to the company, shall not for the purposes of this

section, be treated as a charge on those book debts.

(6) The holding of debentures entitling the holder to a

charge on land shall not for the purposes of this section, be

treated as an interest in land.

(7) Where a series of debentures containing or giving by

reference to any other instrument any charge to the benefit of

which the debenture holder of that series are entitled pari

passu is created by a company, it shall for the purposes of this

section be sufficient if, within fifteen working days from the

date of execution of the deed containing the charge or if

there is no such deed, from the date of execution of any

debentures of the series, the following particulars :—

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

(b) the dates of the resolutions authorising the issue of

the series and the date of the covering deed, if any,

by which the security is created or defined ;

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

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

holders,

together with a copy of the deed containing the charge

verified in the prescribed manner, or if there is no such deed,

one of the debentures of the series, are delivered to or received

by the Registrar :

Provided that, where more than one issue is made of

debentures in the series, there shall be sent to the Registrar

for entry in the register particulars of the date and amount of

each issue. An omission to send such particulars shall not

affect the validity of the debentures issued.

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(8) Where any commission, allowance or discount has

been paid or made either directly or indirectly by a company

to any person, in consideration of his—

(a) subscribing or agreeing to subscribe whether

absolutely or conditionally, for any debentures of

the company ; or

(b) procuring or agreeing to procure subscriptions

whether absolute or conditional, for any such

debentures,

the particulars required to be sent for registration under the

provisions of this section shall include particulars as to the

amount or rate per centum of the commission, discount or

allowance so paid or made. An omission to send such

particulars shall not affect the validity of the debentures

issued.

(9) The deposit of any debentures as security for any debt

of the company shall not for the purposes of subsection (8),

be treated as the issue of the debentures at a discount.

(10) Registration of a charge under this section may be

effected on the application of any person interested in it.

Where registration is effected on the application of a person

other than the company, that person shall be entitled to recover

from the company the amount of any fees paid by him to the

Registrar.

(11) Where any company fails to send to the Registrar for

registration the particulars of any charge created by the

company or of the issue of debentures of a series which requires

registration under this section, then, unless the registration

has been affected on the application of some other person—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding fifty

thouand rupees ; and

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(b) every officer of the company who is in default shall

be guilty of an offence and be liable on conviction

to a fine not exceeding fifty thousand rupees.

(12) The provisions of this section shall be in addition to

and not in substitution of any other written law relating to

the registration of any document or instrument creating or

purporting to create a charge on any property, whether

movable or immovable.

(13) For the purpose of this Part of this Act, “charge”

includes a mortgage.

103. (1) Subject to the provisions of this Part, every Unregistered

charge shall in so far as it confers any security on the charges void in

certain cases.

company’s property or undertaking, be void against the

liquidator and any creditor of the company, unless it is

registered in the manner and within the time prescribed by

section 102 of this Act or by section 91 of the Companies

Act, No. 17 of 1982, as the case may be, or if the time for

registration has been extended under section 108 of this Act,

or under section 97 the Companies Act, No. 17 of 1982, then

within such extended time.

(2) Nothing in this section shall affect any contract or

obligation for repayment of money secured by a charge. If a

charge becomes void under this section, the money which it

secures shall immediately become payable.

(3) For the purpose of this section “charge” means a charge

created on or after July 2, 1982, which was required to be

registered under section 91 of the Companies Act, No. 17 of

1982 or under section 102 of this Act.

104. (1) Where a company registered in Sri Lanka Duty of

acquires any property which is subject to a charge that would, company to

register charges

if it had been created by the company after the acquisition of existing on

the property, have been required to be registered under this property

acquired.

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Part, the company shall, within the time specified by

subsection (2), deliver to the Registrar for registration—

(a) the prescribed particulars of the charge ; and

(b) a copy (certified in the prescribed manner to be a

correct copy) of the instrument, if any, by which the

charge was created or is evidenced.

(2) Particulars of a charge which is required to be

registered under subsection (1) shall be delivered to the

Registrar—

(a) if the property is situated and the charge was created

outside Sri Lanka, within three months of the date

on which the acquisition is completed ; or

(b) in all other cases within twenty-one working days

of the date on which the acquisition is completed.

(3) Where a company fails to comply with this section—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding fifty

thousand rupees ; and

(b) every officer of the company who is in default shall

be guilty of an offence and be liable on conviction

to a fine not exceeding fifty thousand rupees.

Register of 105. (1) The Registrar shall keep with respect to each

charges to be company, a register in the prescribed form of all the charges

kept by

requiring registration under this Part, and shall on payment

Registrar.

of the prescribed fee enter in the register with respect to such

charges, the following particulars :—

(a) in the case of a charge to the benefit of which the

holders of a series of debentures are entitled, the

particulars specified in subsection (8) of

section102;

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(b) in the case of any other charge—

(i) if it is a charge created by the company, the

date of its creation, and if it is a charge which

was existing on property acquired by the

company, the date of the acquisition of the

property ;

(ii) the amount secured by the charge ;

(iii) short particulars of the property charged ;

(iv) the persons entitled to the charge.

(2) The Registrar shall issue a certificate in the prescribed

form, of the registration of any charge registered under this

Part stating the amount secured by it. The certificate shall be

conclusive evidence that the requirements of this Part as to

registration have been complied with.

(3) Registration of a charge under this Part shall constitute

notice to all persons of the particulars of the charge entered

on the register of charges under this section, but not of the

contents of the instrument which creates or is evidence of the

charge.

106. (1) The company shall cause a copy of every Endorsement of

certificate of

certificate of registration given under provision of section

registration on

105 to be endorsed on every debenture or certificate of debentures.

debenture stock which is issued by the company, and the

payment of which is secured by the charge so registered.

(2) Nothing in subsection (1) shall be construed as

requiring a company to cause a certificate of registration of

any charge to be endorsed on any debenture or certificate of

debenture stock issued by the company, before the charge

was created.

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(3) Where any person knowingly and willfully authorises

or permits the delivery of any debenture or certificate of

debenture stock, which under the provisions of this section

is required to have endorsed on it a copy of a certificate of

registration without the copy being so endorsed upon it, he

shall without prejudice to any other liability, be guilty of an

offence and liable on conviction to a fine not exceeding two

hundred thousand rupees.

Entries of 107. Where the Registrar is satisfied that—

satisfaction and

release.

(a) the debt for which any registered charge was given

has been paid or satisfied in whole or in part ; or

(b) any part of the property or undertaking charged has

been released from the charge or has ceased to form

part of a company’s property or undertaking,

he may enter on the register a memorandum of satisfaction in

whole or in part or of the fact that part of the property or

undertaking has been released from the charge or has ceased

to form part of the company’s property or undertaking, as the

case may be.

Rectification of 108. If the court is satisfied that—

register of

charges.

(a) the omission to register a charge within the time

required by this Act ; or

(b) the omission or mis-statement of any particular with

respect to any such charge or in a memorandum of

satisfaction,

was accidental or due to inadvertence or to some other

sufficient cause or is not of a nature to prejudice the position

of creditors or shareholders of the company or it is otherwise

just and equitable to grant relief, the court may on the

application of the company or any person interested and on

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such terms and conditions as seem to the court just and

expedient, order that the time for registration shall be

extended, or that the omission or misstatement shall be

rectified, as the case may be.

PROVISIONS AS TO COMPANY’S REGISTER OF CHARGES AND AS TO

COPIES OF INSTRUMENTS CREATING CHARGES

109. Every company shall keep a copy of every Copies of

instrument creating any charge requiring registration under instruments

creating charges

this Part at its registered office or at such other place as may to be kept by

be notified to the Registrar under section 116. In the case of company.

a series of uniform debentures, a copy of one debenture of the

series shall be sufficient.

110. (1) Every limited company shall— Company’s

register of

charges.

(a) keep at its registered office or at such other place as

may be notified to the Registrar under section 116,

a register of charges ; and

(b) enter in that register all charges specifically affecting

property of the company and all floating charges on

the undertaking or any property of the company,

specifying in each case —

(i) a short description of the property charged ;

(ii) the amount of the charge ;

(iii) except in the case of securities to bearer, the

names of the persons entitled to the charge.

(2) Any officer of the company who knowingly and

willfully authorises or permits the omission of any entry

required to be made under the provisions of this section,

shall be guilty of an offence and be liable on conviction to a

fine not exceeding two hundred thousand rupees.

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REVIEW OF REGISTER OF CHARGES

Review of 111. (1) The Registrar may from time to time by notice

Register of in writing issued to a company, require that company to deliver

charges.

to him within fifteen working days of the receipt of such

notice—

(a) the particulars required to be provided under section

102 in respect of all charges which have been

registered under this Part or under Part III of the

Companies Act, No. 17 of 1982 or Part III of the

Companies Ordinance (Cap. 145), in relation to the

property or undertaking of the company, and which

have not been satisfied in whole or otherwise ceased

to apply to any property of the company ;

(b) a certified copy of the instrument, if any, by which

each such charge is created or evidenced ;

(c) a copy of the certificate issued by the Registrar on

the registration of each such charge ;

(d) an affidavit sworn or affirmed by a director or the

secretary of the company, verifying that the

information provided under this section is to the

best of his knowledge, complete and accurate in

every particular.

(2) Following receipt from a company of the documents

required to be provided under subsection (1), the Registrar

shall review the register of charges kept by him, and shall

make such entries in the register as may be required to ensure

the accuracy of the register.

(3) The Registrar shall not enter a memorandum of

satisfaction of a charge in whole or in part or of the fact that

part of the property or undertaking has been released from a

charge or has ceased to form part of the company’s property

or undertaking, pursuant to a review under this section.

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(4) Where a company fails to compaly with a notice given

under subsection (1)—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding fifty

thousand rupees ; and

(b) every officer of the company who is in default shall

be guilty of an offence, and be liable on conviction

to a fine not exceeding fifty thousand rupees.

APPLICATION OF THIS PART TO OVERSEAS COMPANIES

112. The provisions of this Part of this Act shall apply in Application of

relation to charges on property in Sri Lanka which are created this Part to

charges and

and to charges on property in Sri Lanka which is acquired, by

property to be

an overseas company. acquired by an

overseas

PART VII company.

MANAGEMENT ANDADMINISTRATION

REGISTERED OFFICE

113. (1) Every company shall have a registered office Registered office

in Sri Lanka to which all communications and notices may of a company.

be addressed.

(2) Subject to section 114, the registered office of a

company at a particular time is the place that is described in

the register as its registered office at that time.

(3) If the registered office of a company is at the office of

any chartered accountant, attorney-at-law, or any other

person, the description of the registered office shall state—

(a) that the registered office of the company is at the

office of the chartered accountant, attorney-at-law,

or any other person ; and

(b) particulars of the location of those offices.

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Change of 114. (1) Subject to the company’s articles and to the

registered provisions of subsection (2), the board of a company may

office.

change the registered office of the company at any time.

(2) Notice in the prescribed form of the change shall be

given to the Registrar for registration, and the change shall

take effect five working days after the notice is received by

the Registrar or on such later date as may be specified in the

notice.

Requirement 115. (1) The Registrar may require a company to change

to change its registered office by notice in writing delivered or sent—

registered

office.

(a) to the company at its registered office ; and

(b) to each person who appears from the documents

delivered to the Registrar to be a director of the

company, at his latest address as shown in those

documents.

(2) The notice which shall be dated and signed by the

Registrar, shall—

(a) state that the company is required to change its

registered office by a date specified in the notice,

not being a date that is earlier than twenty working

days after the date of receipt of the notice ;

(b) state the reasons for requiring the change ; and

(c) state that the company has the right to appeal against

such requirement to court under section 472 ;

(3) The company shall change its registered office—

(a) by the date stated in the notice ; or

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(b) if it appeals to court and the appeal is dismissed,

within five working days after the decision of the

court.

(4) Where a company fails to comply with this section—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding fifty

thousand rupees ; and

(b) every officer of the company who is in default shall

be guilty of an offence and be liable on conviction

to a fine not exceedting fifty thousand rupees.

COMPANY RECORDS

116. (1) Subject to the provisions of subsection (3), a Location of

company shall keep the following documents at its registered company

records.

office :—

(a) the certificate of incorporation and the articles of

the company ;

(b) minutes of all meetings and resolutions of

shareholders passed within the last ten years ;

(c) an interests register, unless it is a private company

which is dispensed with the need to keep such a

register ;

(d) minutes of all meetings held and resolutions of

directors passed and directors’ committees held

within the last ten years ;

(e) certificates required to be given by the directors

under this Act within the last ten years ;

(f) the register of directors and secretaries required to

be kept under section 223 ;

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(g) copies of all written communications to all

shareholders or all holders of the same class of shares

during the last ten years, including annual reports

prepared under section 166 ;

(h) copies of all financial statements and group financial

statements required to be completed under this Act

for the last ten completed accounting periods of the

company ;

(i) the copies of instruments creating or evidencing

charges and the register of charges required to be

kept under sections 109 and 110 ;

(j) the share register required to be kept under section

123 ; and

(k) the accounting records required to be kept under

section 148 for the current accounting period and

for the last ten completed accounting periods of the

company.

(2) Notwithstanding the provisions of subsection (1), the

references in paragraphs (b), (d), (e), and (g) of subsection (1)

to the period of ten years and the refereces is paragraph (h)

and (k) of that subsection to ten completed accounting

periods, may be reduced to such lesser period by the Registrar,

where he considers it necessary and appropriate.

(3) The documents referred to in—

(a) paragraphs (a) to (i) of subsection (1) may be kept at

a place in Sri Lanka other than in the registered

office, notice of which is given to the Registrar in

accordance with subsection (4) ;

(b) paragraph (j) of subsection (1) may be kept at a place

other than the registered office, in accordance with

section 124 ;

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(c) paragraph (k) of subsection (1) may be kept at a

place other than the registered office, in accordance

with section 149.

(4) If any records are not kept at the registered office of

the company or the place at which they are kept is changed,

the company shall ensure that within ten working days of

their first being kept elsewhere or moved, as the case may be,

notice is given to the Registrar of the place or places where

the records are kept.

(5) If a company fails to comply with the requirements in

subsection (1) or subsection (4)—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding two

hundred thousand rupees ; and

(b) every officer of the company who is in default shall

be guilty of an offence and be liable on conviction

to a fine not exceeding one hundred thousand

rupees.

117. (1) The records of a company shall be kept in Form of records.

written form or in a form or in a manner that allows the

documents and information that comprise the records to be

easily accessible and convertible into written form.

(2) A company shall ensure that adequate measures exist

to prevent the records being falsified and detect any

falsification of them.

(3) Where a company fails to comply with the

requirements of subsection (2)—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding two

hundred thousand rupees ; and

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(b) every officer of the company who is in default shall

be guilty of an offence and be liable on conviction

to a fine not exceeding one hundred thousand

rupees.

INSPECTION OF COMPANY RECORDS

Inspection of 118. (1) Subject to the provisions of subsection (2),

records by every director of a company is entitled on giving reasonable

directors.

notice, to inspect the written records of the company without

a charge, at a reasonable time specified by the director.

(2) A court may on application made in that behalf by the

company, if it is satisfied that—

(a) it would not be in the company’s interests for a

director to inspect the records ; or

(b) the proposed inspection is for a purpose that is not

properly connected with the director’s duties,

direct that the records be not made available for inspection

or limit the inspection of them in any manner it thinks fit.

Inspection of 119. (1) In addition to the records being made available

company for public inspection under section 120, a company shall

records by

keep the following records available for inspection in the

shareholders.

manner prescribed in section 121 by a shareholder of the

company or by a person authorised in writing by a shareholder

for that purpose, who serves a written notice of such intention

to inspect the company,:—

(a) minutes of all meetings and resolutions of

shareholders ;

(b) copies of written communications to all sharehloders

or to all holders of a class of shares during the

preceding ten years, including annual reports,

financial statements, and group financial

statements;

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(c) certificates issued by directors under this Act ; and

(d) the interests register of the company.

(2) Where a company fails to comply with the

requirements of subsection (1)—

(a) the company shall guilty of an offence and be liable

on conviction to a fine not exceeding two hundred

thousand rupees ; and

(b) every officer of the company who is in default shall

be guilty of an offence and be liable on conviction

to a fine not exceeding one hundred thousand

rupees.

120. (1) A company shall keep the following records Public inspection

available for inspection in the manner described in section of company

121 by any person who serves written notice of such intention records.

to inspect on the company, :—

(a) the certificate of incorporation of the company ;

(b) the articles of the company, if they are not the model

articles ;

(c) the share register ;

(d) the register of directors and secretaries ;

(e) particulars of the registered office of the company ;

(f) copies of the instruments creating or evidencing

charges and the register of charges kept under

sections 109 and 110.

(2) Where a company fails to comply with the

requirements of subsection (1)—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding two

hundred thousand rupees ; and

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(b) every officer of the company who is in default shall

be guilty of an offence and be liable on conviction

to a fine not exceeding one hundred thousand

rupees.

Manner of 121. (1) Documents which may be inspected under

inspection. section 119 or section 120 shall be available for inspection

at the place at which the company’s records are kept, between

the hours of 9.00 a.m. and 4.00 p.m. on each working day

during the inspection period.

(2) A document need not be made available for inspection

in the manner specified in subsection (1), if a certified copy

of the document has been provided to the person or

shareholder concerned without a charge.

(3) In this section, the term “inspection period” means

the period commencing on the third working day after the

day on which notice of intention to inspect is served on the

company by the person or shareholder concerned and ending

on the eighth working day after the day of service.

Copies of 122. (1) A person may require a copy of or extract from

documents. a document which is made available for inspection by him

under section 119 or section 120 to be sent to him within five

working days after he has made a request in writing for such

copy or extract and has paid a reasonable copying and

administration fee as may be determined by the company.

(2) Where a company fails to provide a copy of or extract

from a document in compliance with a request under

subsection (1)—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding one

hundred thousand rupees ; and

(b) every officer of the company who is in default shall

be guilty of an offence and be liable on conviction

to a fine not exceeding fifty thousand rupees.

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SHARE REGISTER

123. (1) Every company which has issued shares shall Company to

maintain a share register that records the shares issued by the maintain share

register.

company, and which includes—

(a) the name and the latest known address of each

person who is or has within the last ten years been a

shareholder ;

(b) the number of shares of each class held by each

shareholder within the last ten years ; and

(c) the date of any—

(i) issue of shares to ;

(ii) repurchase or redemption of shares from ; or

(iii) transfer of shares by or to,

each shareholder within the last ten years, and in relation to

the transfer, the name of the person to or from whom the

shares were transferred.

(2) Where a company fails to comply with the requirements

of subsection (1)—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding two

hundred thousand rupees ; and

(b) every officer of the company who is in default shall

be guilty of an offence and be liable on conviction

to a fine not exceeding one hundred thousand

rupees.

124. (1) The share register of a company may, if expressly Place of share

permitted by the articles, be divided into two or more registers register.

kept in different places.

96 Companies Act, No. 07 of 2007

(2) The principal register shall be kept in Sri Lanka.

(3) Where a share register is divided into two or more

registers kept in different places—

(a) notice of the place where each register is kept shall

be delivered to the Registrar within ten working

days after the share register is so divided, or the

place where a register is kept is altered ;

(b) a copy of every register shall be kept at the place

where the principal register is kept ; and

(c) if an entry is made in a register other than in the

principal register, a corresponding entry shall be

made within ten working days in the copy of that

register kept with the principal register.

(4) Where the share register is not divided and the

principal register is not kept at the registered office of the

company, notice of the place where it is kept shall be delivered

to the Registrar within ten working days after it ceases to be

kept there or after the place at which it is kept is altered.

(5) In this section, “principal register” in relation to a

company, means—

(a) if the share register is not divided into two or more

registers, the share register ;

(b) if the share register is divided into two or more

registers, the register described as the principal

registers in the last notice sent to the Registrar.

(6) Where a company fails to comply with the

requirements of subsection (3) or subsection (4)—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding one

hundred thousand rupees ; and

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(b) every officer of the company who is in default shall

be guilty of an offence and be liable on conviction

to a fine not exceeding fifty thousand rupees.

125. An instrument of transfer of a share registered in a Stamp duties in

register kept outside Sri Lanka shall be deemed to be a transfer case of shares

registered in a

of property situated out side of Sri Lanka, and unless executed register outside

in Sri Lanka, shall be exempt from stamp duty chargeable in Sri Lanka.

Sri Lanka.

126. (1) Every company having more than fifty Index of

shareholders shall, (unless the share register is in such a form shareholders.

as to constitute in itself an index) keep an index of the names

of the shareholders of the company and shall within ten

working days from the date on which any alteration is made

in the share register, make any necessary alteration in the

index.

(2) The index shall in respect of each shareholder, contain

sufficient indication enabling the account of that shareholder

in the register to be readily found.

(3) Where an index kept under this section contains the

name of a company to which subsection (2) of section 129

applies, there shall be annexed to the index all written notices

given by that company relating to the person or persons for

whose benefit the shares registered in the name of that

company are held in trust.

(4) Where a company fails to comply with subsection (1),

subsection (2) or subsection (3)—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding one

hundred thousand rupees ; and

(b) every officer of the company who is in default shall

be guilty of an offence and be liable on conviction

to a fine not exceeding fifty thousand rupees.

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Power to close 127. A company may, after notice published in the

register. Gazette and in any nawspaper circulating in the district in

which the registered office of the company is situated and in

which the share register is kept, close the share register for

any time or times not exceeding in the whole thirty working

days in each year.

Power of court 128. (1) Where—

to rectify

register.

(a) the name of any person is without sufficient cause

entered in or omitted from the share register of a

company ; or

(b) default is made or unnecessary delay takes place in

entering on the register the fact of any person having

ceased to be a shareholder,

the person aggrieved or the company or any shareholder of

the company, may make an application to the court for

rectification of the register.

(2) Where an application is made under this section, the

court may order rectification of the register and payment by

the company of any damages sustained by any party

aggrieved.

(3) On an application made under this section, the court

may decide—

(a) any question relating to the title of any person who

is a party to the application to have his name entered

in or omitted from the register, whether the question

arises between shareholders or alleged shareholders

or between shareholders or alleged shareholders on

the one hand and the company on the other hand ;

and

(b) any other question necessary or expedient to be

decided for rectification of the register.

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(4) If the court makes an order directing the rectification

of the register, the company shall within ten working days of

the making of the order, deliver a copy of the order to the

Registrar.

(5) Where a company fails to comply with the requirements

of subsection (4)—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding one

hundred thousand rupees ; and

(b) every officer of the company who is in default shall

be guilty of an offence and be liable on conviction

to a fine not exceeding fifty thousand rupees.

129. (1) Subject to the provisions of subsection (2), no Trusts not to be

entered on share

notice of any trust, expressed, implied or constructive, shall

register.

be entered on the shareregister or be receivable by the Registrar

in the case of companies registered in Sri Lanka.

(2) A company shall enter in its register and the Registrar

shall receive notice of any trust, the trustee of which is a

company and—

(a) the principal business of which is to act as a central

depository to a stock exchange licensed under the

Securities and Exchange Commission of Sri Lanka

Act, No. 36 of 1987 ; and

(b) which has been approved by the Minister in

consultation with the Securities and Exchange

Commission of Sri Lanka, established by that Act.

130. (1) The entry of the name of a person in the share Share register to

register as holder of a share shall be prima facie evidence be evidence.

that title to the share is vested in that person.

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(2) Subject to the provisions of subsections (2) and (3) of

section 86, a company may treat the registered holder of a

share as the only person entitled to—

(a) exercise the right to vote attaching to the share ;

(b) receive notices ;

(c) receive a distribution in respect of the share ; and

(d) exercise any other rights and powers attaching to

the share.

ANNUALRETURN

Annual return. 131. (1) Subject to the provisions of subsection (3),

every company shall at least once in every year deliver to the

Registrar an annual return in the prescribed form, containing

the matters specified in the Fifth Schedule hereto.

(2) The annual return shall be completed within thirty

working days from the date of the Annual General Meeting

for the year, whether or not that meeting is the first or only

meeting of the shareholders in the year. The company shall

forthwith forward to the Registrar a copy of the return, signed

both by a director and the secretary of the company.

(3) The provisions of this section shall not apply to a

company in the year of its incorporation.

(4) Where a company fails to comply with the

requirements of subsection (1) or subsection (2)—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding one

hundred thousand rupees ; and

(b) every officer of the company who is in default shall

be guilty of an offence and be liable on conviction

to a fine not exceeding fifty thousand rupees.

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132. Every private company shall send to the Registrar Declaration and

with its annual return— certificate to be

sent by private

company with

(a) a declaration signed by the directors of the company annual return.

to the effect that to the best of their knowledge and

belief, they have done all things required to be done

by them by or under this Act ;

(b) a certificate signed by a director and by the secretary

of the company—

(i) that the company has not since the date of

the last return or in the case of a first return,

since the date of the incorporation of the

company, issued any invitation to the public

to subscribe for any shares or debentures of

the company ;

(ii) where the annual return discloses the fact that

the number of shareholders of the company

exceeds fifty, that the excess consists wholly

of persons who under section 27, are not to

be taken into account in relation to that limit.

MEETINGSAND PROCEEDINGS

133. (1) Subject to the provisions of subsection (2) and Annual general

of section 144, the board of a company shall call an annual meeting.

general meeting of shareholders to be held once in each

calendar year—

(a) not later than six months after the balance sheet date

of the company ; and

(b) not later than fifteen months after the previous

annual general meeting.

(2) A company is not required to hold its first annual

general meeting in the calendar year of its incorporation, but

shall hold that meeting within eighteen months of its

incorporation.

102 Companies Act, No. 07 of 2007

(3) Where default is made in holding a meeting of the

company in accordance with the provisions of this section,

the Registrar may on the application of any shareholder of

the company, call or direct the calling of an annual general

meeting of the company and give such ancillary or

consequential directions as the Registrar thinks expedient,

including any direction modifying or supplementing in

relation to the calling, holding and conducting of the meeting,

the operation of the company’s articles and a direction to the

effect that one shareholder of the company present in person

or by proxy shall be deemed to constitute a meeting.

(4) An annual general meeting held in pursuance of the

provisions of subsection (3) shall, subject to any direction of

the Registrar, be deemed to be an annual general meeting of

the company, but where a meeting so held is not held in the

year in which the default in holding the company’s annual

general meeting occurred, the meeting so held shall not be

treated as the annual general meeting for the year in which it

is held, unless at that meeting the company resolves that it

shall be so treated.

(5) Where a company resolves that a meeting be treated

in the manner referred to in subsection (4), a copy of the

resolution shall within ten working days from the date of

passing thereof, be forwarded to the Registrar and recorded

by him.

(6) Where default is made in holding a meeting of the

company in accordance with the provisions of subsection (1)

or in complying with any directions of the Registrar under

the provisions of subsection (3) or in complying with the

provisions of subsection (4)—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding one

hundred thousand rupees ; and

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(b) every officer of the company who is in default shall

be guilty of an offence, and be liable on conviction

to a fine not exceeding fifty thousand rupees.

134. (1) Notwithstanding anything in its articles, the Convening of

directors of a company shall on the requisition of extraordinary

shareholders holding at the date of the deposit of the general meeting

on requisition.

requisition shares which carry not less than ten per centum

of the votes which may be cast on an issue, forthwith proceed

duly to convene an extraordinary general meeting of the

company to consider and vote on that issue. The meeting

shall be convened not later than fifteen working days after

the date of the deposit of the requisition and held not later

than thirty working days after the date of the deposit of the

requisition.

(2) The requisition shall state the issue or issues to be

considered and voted on at the meeting and shall be signed

by the requisitionists and deposited at the registered office

of the company, and may consist of several documents in

like form each signed by one or more requisitionists.

(3) Where the directors do not within fifteen working days

from the date of the deposit of the requisition duly proceed

to convene a meeting, the requisitionists or any of them

representing more than one-half of the total voting rights of

all of them may themselves convene a meeting, but any

meeting so convened shall not be held after the expiration of

three months from the said date.

(4) A meeting convened under the provisions of this

section by the requisitionists shall be convened in the same

manner and as nearly as possible as that in which meetings

are to be convened by the directors.

(5) Any reasonable expenses incurred by the

requisitionists by reason of the failure of the directors to duly

convene a meeting shall be repaid to the requisitionists by

the company, and any sum so repaid shall be retained by the

104 Companies Act, No. 07 of 2007

company out of any sums due or to become due from the

company by way of fees or other remuneration, in respect of

their services to such of the directors as were in default.

(6) For the purposes of this section the directors shall, in

the case of a meeting at which a resolution is to be proposed

as a special resolution, be deemed not to have duly convened

the meeting, if they do not give such notice thereof as is

required by the provisions of section 145.

Length of notice 135. (1) Any provision of a company’s articles shall be

for calling void in so far as it provides for the calling of a meeting of the

meetings.

company (other than an adjourned meeting) by a shorter

notice than—

(a) in the case of the annual general meeting, fifteen

working days’ notice in writing ; and

(b) in the case of a meeting other than an annual general

meeting or a meeting for the passing of a special

resolution, ten working days’ notice in writing in

the case of a company other than a private or an

unlimited company and five working days’ notice

in writing in the case of a private or an unlimited

company.

(2) Subject to the provisions of subsection (1), save in so

far as the articles of a company make other provisions in that

behalf, a meeting of the company (other than an adjourned

meeting) may be called—

(a) in the case of the annual general meeting, by fifteen

working days’ notice in writing ; and

(b) in the case of a meeting, other than an annual general

meeting or a meeting for the passing of a special

resolution, by ten days notice in writing in the case

of a company other than a private or unlimited

company and by five working days’ notice in writing

in the case of a private or an unlimited company.

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(3) A meeting of the company shall, notwithstanding that

it is called by shorter notice than that specified in the

preceding subsection or in the company’s articles, as the case

may be, be deemed to have been duly called, if it is so agreed—

(a) in the case of the meeting called as the annual

general meeting, by all the shareholders entitled to

attend and vote at such meeting ; and

(b) in the case of any other meeting, by the shareholders

having a right to attend and vote at the meeting,

being shareholders together holding shares which

carry not less than ninety-five per centum of the

voting rights, on each issue to be considered and

voted on at that meeting.

136. The following provisions shall have effect in so far Provisions as to

as the articles of the company do not make other provisions meetings and

votes.

in that behalf—

(a) notice of the meeting of a company shall be served

on every shareholder of the company in the manner

in which notices are required to be served under the

provisions of the model articles ;

(b) two or more shareholders holding shares which carry

not less than ten per centum of the votes which may

be cast on an issue, may call a meeting to consider

and vote on that issue ;

(c) in the case of a private company two shareholders,

and in the case of any other company three

shareholders, present in person or by an authorised

representative under the provisions of paragraph (a)

of subsection (1) of section 138 shall be a quorum ;

(d) any shareholder elected by the shareholders present

at a meeting may be chairman thereof ;

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(e) no shareholder shall be entitled to vote at any

general meeting, unless all calls or other sums then

payable by him in respect of shares in the company

have been paid ;

(f) where voting is by show of hands, each shareholder

shall have one vote and on a poll every shareholder

shall have one vote in respect of each share held by

him.

Power of court 137. (1) Where for any reason it is impracticable to call

to order a meeting of a company in any manner in which meetings of

meeting.

that company may be called, or to conduct the meeting of the

company in the manner specified by the company’s articles

or this Act, the court may either of its own motion or on the

application of any director of the company or of any

shareholder of the company who would be entitled to vote at

the meeting, order a meeting of the company to be called,

held and conducted in such manner as the court thinks fit,

and where any such order is made, may give such ancillary or

consequential direction as it thinks expedient, and any

meeting called, held and conducted in accordance with any

such order shall for all purposes be deemed to be a meeting of

the company duly called, held and conducted and any such

direction may include a direction that one shareholder of the

company present in person or by proxy shall be deemed to

constitute a meeting.

(2) A copy of each notice calling a meeting under the

provisions of this section, shall be sent to the Registrar at the

same time as such notice is required to be sent to the

shareholders.

(3) Where default is made in complying with the

provisions of subsection (2)—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding one

hundred thousand rupees ; and

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(b) every officer of the company who is in default shall

be guilty of an offence and be liable on conviction

to a fine not exceeding fifty thousand rupees.

138. (1) A corporation, whether a company within the Representation

meaning of this Act or not, may— of companies at

meetings of

other companies

(a) where it is a shareholder of another corporation, and of creditors.

being a company within the meaning of this Act, by

resolution of its directors or other governing body,

authorise such a person as it thinks fit to act as its

representative at any meeting of the company or at

any meeting of any class of shareholders of the

company ;

(b) where it is a creditor (including a holder of

debentures) of another corporation being a company

within the meaning of this Act, by resolution of its

directors or other governing body authorise such

person as it thinks fit to act as its representative at

any meeting of any creditors of the company, held

in pursuance of this Act or any rules made thereunder,

or in pursuance of the provisions contained in any

debenture or trust deed, as the case may be.

(2) A person authorised as aforesaid shall be entitled to

exercise the same power on behalf of the corporation which

he represents as that corporation could exercise if it were an

individual shareholder, creditor or holder of debentures, of

that other company.

139. (1) Any shareholder of a company entitled to Proxies.

attend and vote at a meeting of the company shall be entitled

to appoint another person (whether a shareholder or not) as

his proxy to attend and vote instead of him. A proxy so

appointed shall have the same right as the shareholder to

vote on a show of hands or on a poll and to speak at the

meeting :

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Provided that unless the articles otherwise provide, a

shareholder shall not be entitled to appoint more than one

proxy to attend on the same occasion.

(2) Notwithstanding anything in this Act, where the

Secretary to the Treasury is the holder of more than ten per

centum of the shares, the Secretary to the Treasury shall be

entitled to appoint another person as his proxy for every ten

per centum or part thereof of the shares held by the Secretary

to the Treasury :

Provided where the Secretary to the Treasury is a holder of

a golden share in a company in terms of its articles,

notwithstanding anything in this Act, the Secretary to the

Treasury as the golden shareholder thereof shall be entitled

to appoint not more than three other persons as his proxies to

attend on the same occasion.

(3) In every notice calling a meeting of a company, there

shall appear with reasonable prominence a statement that a

shareholder entitled to attend and vote is entitled to appoint

a proxy to attend and vote instead of him and that a proxy

need not also be a shareholder. Where default is made in

complying with the provisions of this subsection as respects

any meeting, every officer of the company who is in default

shall be guilty of an offence and be liable on conviction to a

fine not exceeding fifty thousand rupees.

(4) Any provisions contained in a company’s articles shall

be void in so far as it would have the effect of requiring the

instrument appointing a proxy or any other document

necessary to show the validity of or otherwise relating to the

appointment of a proxy, to be received by the company or

any other person more than forty-eight hours before a meeting

or adjourned meeting, in order that the appointment may be

effective thereat.

(5) Where for the purpose of any meeting of a company,

invitations to appoint as proxy a person or one of a number of

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persons specified in the invitations are issued at the company’s

expense to some only of the shareholders entitled to be sent

a notice of the meeting and to vote thereat by proxy, every

officer of the company who knowingly and wilfully

authorises and permits their issue as aforesaid, shall be guilty

of an offence and be liable on conviction to a fine not

exceeding two hundred thousand rupees :

Provided that an officer shall not be liable under the

provisions of this subsection by reason only of the issue to a

shareholder at his request in writing of a form of appointment

naming the proxy or of a list of persons willing to act as

proxy, if the form or list is available on request in writing to

every shareholder entitled to vote at the meeting by proxy.

(6) The provisions of this section shall apply to meetings

of any class of shareholders of a company as it applies to

general meetings of the company.

(7) Every shareholder of the company or a proxy holder,

shall be entitled to inspect the proxies received under the

provisions of this section at least three hours before the

commencement of the meeting or adjourned meeting at which

the proxy is to be used.

140. (1) Any provision contained in a company’s articles Right to demand

shall be void, in so far as it would have the effect either — a poll.

(a) of excluding the right to demand a poll at a general

meeting on any question, other than the election of

the chairman of the meeting or the adjournment of

the meeting; or

(b) of making ineffective a demand for a poll on any

such question which is made either —

(i) by not less than five shareholders having the

right to vote at the meeting; or

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(ii) by a shareholder or shareholders representing

not less than one-tenth of the total voting

rights of all the shareholders having the right

to vote at the meeting.

(2) The instrument appointing a proxy to vote at a meeting

of a company shall be deemed also to confer authority to

demand or join in demanding a poll, and for the purposes of

the provisions of subsection (1), a demand by a person as

proxy for a share holder shall be the same as a demand by the

shareholder.

Voting on a poll. 141. On a poll taken at a meeting of a company or a

meeting of any class of shareholders of a company, a

shareholder entitled to more than one vote need not if he

votes, use or cast all his votes in the same way.

Circulation of 142. (1) It shall be the duty of a company on the

shareholder’s requisition in writing of such number of shareholders as is

resolutions on

hereinafter specified and (unless the company otherwise

requisition.

resolves) at the expense of the requisitionists—

(a) to give to shareholders of the company entitled to

receive notice of the next annual general meeting,

notice of any resolution which may properly be

moved and is intended to be moved at that meeting;

(b) to circulate to shareholders entitled to have notice

of any general meeting sent to them, any statement

with respect to the matter referred to in any proposed

resolution or the business to be dealt with at that

meeting.

(2) The number of shareholders necessary for a requisition

under the provisions of subsection (1) shall be—

(a) any number of shareholders representing not less

than one-twentieth of the total voting rights of all

the shareholders having at the date of the requisition

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a right to vote at the meeting to which the requisition

relates; or

(b) not less than fifty shareholders.

(3) Notice of any such resolution shall be given and any

such statement shall be circulated to shareholders of the

company entitled to have notice of the meeting sent to them,

by serving a copy of the resolution or statement on each such

shareholder in any manner permitted for service of notice of

the meeting, and notice of any such resolution shall be given

to any other shareholder of the company by giving notice of

the general effect of the resolution, in any manner permitted

for giving him notice of meetings of the company :

Provided that the copy shall be served or notice of the

effect of the resolution shall be given, as the case may be, in

the same manner and as far as practicable at the same time as

notice of the meeting, and where it is not practicable for it to

be served or given at that time, it shall be served or given as

soon as practicable thereafter.

(4) A company shall not be bound under the provisions

of this section to give notice of any resolution or to circulate

any statement unless—

(a) a copy of the resolution signed by the requisitionists

(or two or more copies which between them contain

the signatures of all the requisitionists) is deposited

at the registered office of the company —

(i) in the case of a requisition requiring notice

of a resolution, not less than six weeks before

the date of the meeting; and

(ii) in the case of any other requisition, not less

than one week before the meeting; and

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(b) there is deposited or tendered with the requisition, a

sum reasonably sufficient to meet the company’s

expenses in giving effect thereto :

Provided that where after a copy of a requisition requiring

notice of a resolution has been deposited at the registered

office of the company, an annual general meeting is called

for a date six weeks or less from the date on which the copy

has been so deposited, the copy though not deposited within

the time required by this subsection, shall be deemed to have

been properly deposited for the purposes thereof.

(5) The company shall not be bound under the provisions

of this section to circulate any statement, if on the application

either of the company or of any other person who claims to

be aggrieved, the court is satisfied that the rights conferred

by the provisions of this section are being abused to secure

unnecessary publicity for defamatory matter and the court

may order the company’s costs on an applicaiton made under

the provisions of this section, to be paid in whole or in part

by the requisitionists, notwithstanding that they are not

parties to the application.

(6) Notwithstanding anything in the company’s articles,

the business which may be dealt with at an annual general

meeting shall include any resolution, of which notice is given

in accordance with the provisions of this section, and for the

purpose of this subsection notice shall be deemed to have

been so given notwithstanding the accidental omission of

giving such notice to one or more shareholders.

(7) Where any default is made in complying with the

provisions of this section, every officer of the company who

is in default shall be guilty of an offence and be liable on

conviction to a fine not exceeding one hundred thousand

rupees.

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143. (1) A resolution shall be a special resolution when Special

it has been passed— resolutions.

(a) by a majority of seventy-five per centum of those

shareholders entitled to vote and voting on the

question;

(b) at a general meeting of which not less than fifteen

working days’ notice, specifying the intention to

propose the resolution as a special resolution has

been duly given :

Provided that, where it is so agreed by the shareholders

having the right to attend and vote at any such meeting,

being shareholders together representing not less than eighty-

five per centum of the total voting rights at that meeting, a

resolution may be proposed and passed as a special resolution

at a meeting of which less than fifteen working days’ notice

has been given.

(2) At any meeting at which a special resolution is

submitted to be passed, a declaration of the chairman that the

resolution is carried shall, unless a poll is demanded, be

conclusive evidence of that fact without proof of the number

or proportion of the votes recorded in favour of or against the

resolution.

(3) In computing the majority on a poll demanded on the

question that a special resolution be passed, reference shall

be had to the number of votes cast for and against the

resolution.

(4) For the purposes of this section notice of a meeting

shall be deemed to be duly given and the meeting to be

duly held, when the notice is given and the meeting is held

in the manner provided for by the company’s articles or by

this Act.

114 Companies Act, No. 07 of 2007

Resolution in 144. (1) Subject to the provisions contained in the

lieu of meeting. company’s articles, a resolution in writing signed by not less

than eighty-five per centum of the shareholders who would

be entitled to vote on that resolution at a meeting of

shareholders, who together hold not less than eighty-five per

centum of the votes entitled to be cast on that resolution,

shall be as valid as if it had been passed at a meeting of those

shareholders.

(2) Subject to the provisions contained in the company’s

articles, a resolution in writing that—

(a) relates to a matter that is required by this Act or by

the articles to be decided at a meeting of the

shareholders of a company; and

(b) is signed by the shareholders specified in

subsection(1),

is deemed to be made in accordance with the provisions of

this Act or the articles of the company.

(3) It shall not be necessary for a company to hold an

annual general meeting of shareholders under section 133, if

everything required to be done at that meeting (by resolution

or otherwise) is done by resolution in accordance with this

section.

(4) Within five working days of a resolution being passed

under this section, the company shall send a copy of the

resolution to every shareholder who did not sign the

resolution.

(5) A resolution may be signed under subsection (1) or

subsection (2) without any prior notice being given to

shareholders.

(6) Where a company fails to comply with the

requirements of subsection (4) —

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding one

hundred thousand rupees; and

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(b) every officer who is in default shall be guilty of an

offence and be liable on conviction to a fine not

exceeding fifty thousand rupees.

(7) A person who is registered as the holder of parcels of

shares having different beneficial owners, may expressly sign

a resolution under this section in respect of shares having

one beneficial owner and refrain from signing the resolution

in respect of shares having another beneficial owner.

(8) Notwithstanding any provision in this Act, where the

Secretary to the Treasury is the holder of a share of a company,

any resolution referred to in this section shall not be valid

unless the consent in writing of the Secretary to the Treasury

as a holder of the share is also obtained in favour of such

resolution.

145. Where by any provision hereafter contained in this Resolutions

Act, special notice is required of a resolution, the resolution requiring special

notice.

shall not be effective unless notice of the intention to move

it has been given to the company not less than twenty-eight

days before the date of the meeting at which it is to be moved,

and the company shall give its shareholders notice of any

such resolution at the same time and in the same manner as it

gives notice of the meeting, or if that is not practicable, shall

give them notice thereof either by advertisement in a

newspaper having an appropriate circulation or in any other

manner allowed by the company’s articles, not less than fifteen

working days before the date of the meeting:

Provided that, where after notice of the intention to move

such a resolution has been given to the company a meeting is

called for a date twenty-eight days or less from the date of the

notice, the notice though not given within the time required

by this section, shall be deemed to have been properly given

for the purposes thereof.

116 Companies Act, No. 07 of 2007

Resolutions 146. Where after the appointed date, a resolution is

passed at passed at an adjourned meeting of—

adjourned

meetings.

(a) a company ;

(b) the holders of any class of shares in a company;

(c) the directors of a company,

the resolution shall for all purposes be treated as having been

passed on the date on which it was in fact passed, and shall

not be deemed to have been passed on any earlier date.

Minutes of 147. (1) Every company shall cause minutes of all

proceedings of proceedings of general meetings and meetings of its directors

meetings of to be entered in books kept for that purpose.

shareholders and

directors.

(2) Any such minutes purporting to be signed by the

chairman of the meeting at which the proceedings were had,

or by the chairman of the next succeeding meeting, shall be

evidence of such proceedings.

(3) Where minutes have been made in accordance with

the provisions of this section of the proceedings at any general

meeting, or a meeting of directors of the company, as the case

may be, then until the contrary is proved, the meeting shall

be deemed to have been duly held and convened and all

appointments of directors, managers or liquidators, made at

the meeting, shall be deemed to be valid.

(4) Every director and former director of a company shall

be entitled to receive from the company secretary, certified

copies of the minutes of all the meetings of the board of

directors of such company held during the period when he is

or he was a director of that company.

(5) Where a company fails to comply with the provisions

of subsection (1)—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding one

hundred thousand rupees; and

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(b) every officer of the company who is in default shall

be guilty of an offence and be liable on conviction

to a fine not exceeding fifty thousand rupees.

ACCOUNTING RECORDS

148. (1) Every company shall keep accounting records Duty to keep

which correctly record and explain the company’s accounting

records.

transactions, and will—

(a) at any time enable the financial positions of the

company to be determined with reasonable accuracy;

(b) enable the directors to prepare financial statements

in accordance with this Act; and

(c) enable the financial statements of the company to

be readily and properly audited.

(2) Without limiting the provisions contained in

subsection (1), the accounting records shall contain—

(a) entries of money received and expended each day

by the company and the matters in respect of which

such money was spent;

(b) a record of the assets and liabilities of the company;

(c) if the company’s business involves dealing in

goods—

(i) a record of goods bought and sold, except

goods sold for cash in the ordinary course of

carrying on a retail business that identifies

both the goods and buyers and sellers and

the relevant invoices;

(ii) a record of stock held at the end of the

financial year together with records of any

stock takings during the year;

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(d) if the company’s business involves providing

services, a record of services provided and relevant

invoices.

(3) Where a company fails to comply with the

requirements of this section—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding two

hundred thousand rupees; and

(b) every officer of the company who is in default shall

be guilty of an offence, and be liable on conviction

to a fine not exceeding two hundred thousand

rupees.

Place where 149. (1) A company shall keep its accounting records

accounting in Sri Lanka. However, where the Registrar considers it not

records are kept.

prejudicial to the national economy or to the interests of

shareholders of the company, he may permit a company to

keep its accounting records outside Sri Lanka.

(2) If the records are not kept in Sri Lanka—

(a) the company shall ensure that the accounts and

returns of the operations of the company—

(i) disclose with reasonable accuracy the

financial position of the company at intervals

not exceeding periods of six months; and

(ii) will enable the preparation in accordance

with this Act of the company’s financial

statements and any group financial statements

and any other document required to be

maintained under this Act,

are sent to and kept at a place in Sri Lanka; and

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(b) notice of the place where the accounting records

and the accounts and returns required under

paragraph (a) are kept, shall be given to the Registrar.

(3) Where a company fails to comply with the

requirements of subsection (2)—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding two

hundred thousand rupees; and

(b) every officer of the company who is in default shall

be guilty of an offence and be liable on conviction

to a fine not exceeding two hundred thousand rupees.

DUTYTO PREPARE FINANCIAL STATEMENTS

150. (1) The board of every company shall ensure that Obligation to

within six months or within such extended period as may be prepare financial

determined by the Registrar after the balance sheet date of statements.

the company, financial statements that comply with the

requirements of section 151 are—

(a) completed in relation to the company and that

balance sheet date;

(b) certified by the person responsible for the

preparation of the financial statements that it is in

compliance with the requirements of this Act; and

(c) dated and signed on behalf of the board by two

directors of the company or if the company has only

one director, by that director.

(2) Where the board fails to comply with the requirements

specified in subsection (1), every director of the company

who is in default shall be guilty of an offence and be liable on

conviction to a fine not exceeding one hundred thousand

rupees.

120 Companies Act, No. 07 of 2007

Contents and 151. (1) The financial statements of a company shall

form of give a true and fair view of—

financial

statements.

(a) the state of affairs of the company as at the balance

sheet date; and

(b) the profit or loss or income and expenditure, as the

case may be, of the company for the accounting

period ending on that balance sheet date.

(2) Without limiting the provisions contained in

subsection (1), the financial statements of a company shall

comply with—

(a) any regulations made under this Act which specifies

the form and content of financial statements; and

(b) any requirements which apply to the company’s

financial statements under any other law.

Obligation to 152. (1) Subject to the provisions of subsection (2), the

prepare group board of a company that has on the balance sheet date of the

financial company one or more subsidiaries, shall, in addition to

statements.

complying with section 150, ensure that within the time

specified in that section, group financial statements that

comply with section 153 are—

(a) completed in relation to that group and that balance

sheet date;

(b) certified by the person responsible for the

preparation of the financial statements that it is in

compliance with the requirements of this Act; and

(c) dated and signed on behlaf of the directors by two

directors of the company or if the company has only

one director, by that director.

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(2) Group financial statements and a balance sheet date

shall not be required in relation to a company, if the company

is at that balance sheet date the wholly owned subsidiary of

another company.

(3) Where the board fails to comply with the requirements

specified in subsection (1), every director of the company

who is in default shall be guilty of an offence, and be liable

on conviction to a fine not exceeding one hundred thousand

rupees.

153. (1) The financial statements of a group shall give Contents and

a true and fair view of — form of group

financial

statements.

(a) the state of affairs of the company and its

subsidiaries as at the balance sheet date; and

(b) the profit or loss or income and expenditure, as the

case may be, of the company and its subsidiaries for

the accounting period ending on that balance sheet

date.

(2) Without limiting the provisions contained in

subsection (1), the financial statements of a group shall

comply with —

(a) any regulations made under this Act which specifies

the form and content of group financial statements;

and

(b) any requirements which apply to the group financial

statements under any other law.

(3) Where a subsidiary became a subsidiary of a company

during the accounting period to which the group financial

statements relate, the consolidated profit and loss statement

or the consolidated income and expenditure statement for

the group, shall relate to the profit or loss of the subsidiary

for each part of that accounting period during which it was a

subsidiary, and not to any other part of that accounting period.

122 Companies Act, No. 07 of 2007

(4) Subject to the provisions of subsection (3), where the

balance sheet date of a subsidiary of a company is not the

same as that of the company, the group financial statements

shall —

(a) if the balance sheet date of the subsidiary does not

precede that of the company by more than three

months, incorporate the financial statements of the

subsidiary for the accounting period ending on that

date, or incorporate interim financial statements of

the subsidiary completed in respect of a period that

is the same as the accounting period of the company;

or

(b) in any other case, incorporate interim financial

statements of the subsidiary completed in respect of

a period that is the same as the accounting period of

the company.

(5) Subject to the provisions of subsections (3) and (6),

group financial statements shall incorporate the financial

statements prepared in accordance with section 151, of every

subsidiary of the company.

(6) Subject to the provisions of subsection (7), group

financial statements prepared by a company need not

incorporate the financial statements of a subsidiary of that

company, where the board of the company is of the opinion

that—

(a) it is impracticable to do so or would be of no real

value to the shareholders of the company in view of

the insignificant amounts involved, or would involve

expense or delay out of proportion to the value to

shareholders;

(b) the result would be misleading or harmful to the

business of the company or any of its subsidiaries;

or

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(c) the business of the company and that of the

subsidiary are so different, that they cannot

reasonably be treated as a single undertaking.

(7) Group financial statement prepared by a company

may not omit the financial statements of a subsidiary of that

company under subsection (6), without the prior approval in

writing of the Registrar, which may be given on such terms or

conditions as the Registrar thinks fit.

AUDITORS

154. (1) A company shall at each annual general meeting, Appointment of

appoint an auditor to— auditor.

(a) hold office from the conclusion of that meeting until

the conclusion of the next annual general meeting;

and

(b) audit the financial statements of the company and if

the company is required to complete group financial

statements, those group financial statement for the

accounting period next after the balance sheet date

for which financial statements were audited.

(2) The board of a company may fill any casual vacancy

in the office of auditor, but while the vacancy remains the

surviving or continuing auditor, if any, may continue to act

as auditor.

(3) Where —

(a) at an annual general meeting of a company no

auditor is appointed or re-appointed and no

resolution has been passed under subsection (2); or

(b) a casual vacancy in the office of auditor is not filled

within one month of the occurring of such vacancy,

the Registrar may appoint an auditor.

124 Companies Act, No. 07 of 2007

(4) A company shall within five working days of the power

becoming exercisable, give written notice to the Registrar of

the fact that the Registrar is entitled to appoint an auditor

under subsection (3).

(5) Where a company fails to comply with the

requirements of subsection (4)—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding two

hundred thousand rupees; and

(b) every officer of the company who is in default shall

be guilty of an offence and be liable on conviction

to a fine not exceeding one hundred thousand

rupees.

Auditor’s fees 155. The fees and expenses of an auditor of a company

and expenses. shall be fixed —

(a) if the auditor is appointed at a meeting of the

company, by the company at such meeting or in

such manner as the company determines at the

meeting;

(b) if the auditor is appointed by the directors, by the

directors; or

(c) if the auditor is appointed by the Registrar, by the

Registrar.

Appointment of 156. (1) A partnership may be appointed by the firm’s

partnership as name to be the auditor of a company, if the partners are persons

auditor. who are qualified to be appointed as auditors of the company.

(2) The appointment of a partnership by the firm’s name

to be the auditor of a company is deemed, subject to the

provisions of section 157, to be the appointment of all the

persons who are partners in the firm, from time to time.

Companies Act, No. 07 of 2007 125

157. (1) A person shall not be appointed or act as auditor Qualifications of

auditors.

of a company, unless that person—

(a) is a member of the Institute of Chartered Accountants

of Sri Lanka; or

(b) is a registered auditor.

(2) Notwithstanding the provisions of subsection (1), a

person shall not be appointed or act as auditor of a company

other than a private company or a company limited by

guarantee, unless that person is a member of the Institute of

Chartered Accountants of Sri Lanka.

(3) None of the following persons may be appointed or

act as an auditor of a company :—

(a) a director or employee of the company;

(b) a person who is a partner or in the employment of a

director or employee of the company;

(c) a liquidator or an administrator or a person who is a

receiver in respect of the property of the company;

(d) a body corporate ;

(e) a person who, by virtue of paragraph (a), (b) or (c),

may not be appointed or act as auditor of a related

company.

(4) A person who holds any office referred to in paragraph

(a), (b) or (c) of subsection (3), may not be appointed or act as

an auditor of a company for a period of two years after such

person has ceased to hold that office.

126 Companies Act, No. 07 of 2007

(5) Regulations may be made providing for —

(a) the qualifications necessary to become a registered

auditor;

(b) the procedure for the registration of auditors;

(c) the fees payable for such registration.

Automatic re- 158. (1) An auditor of a company, other than an auditor

appointment. appointed under subsection (1) of section 159, shall be

deemed to be re-appointed at an annual general meeting of

the company, unless—

(a) he is not qualified for appointment;

(b) the company passes a resolution at the meeting

appointing another person to replace him as auditor;

or

(c) the auditor has given notice to the company that he

does not wish to be re-appointed.

(2) An auditor is not automatically re-appointed if the

person who it is proposed to replace him, dies or is or becomes

incapable of or disqualified from being so appointment.

Appointment of 159. (1) The first auditor of a company may be appointed

first auditor.

by the board of the company before the first annual general

meeting, and if so appointed, will hold office until the

conclusion of that meeting.

(2) If the board does not appoint an auditor under

subsection (1), the company shall appoint the first auditor at

a meeting of the company.

Companies Act, No. 07 of 2007 127

(3) Neither the board nor the company shall be required

to appoint an auditor in accordance with the provisions of

this section, if a unanimous resolution is passed by the

shareholders that no auditor be appointed. Such a resolution

ceases to have effect at the commencement of the first annual

general meeting.

160. (1) A company shall not appoint a new auditor in Replacement

place of an auditor who is qualified for re-appointment, of auditor.

unless—

(a) at least twenty working days’ written notice of a

proposal to do so has been given to the auditor; and

(b) the auditor has been given a reasonable opportunity

to make representations to the shareholders on the

appointment of another person, either in writing or

by the auditor or his representative speaking at a

shareholders’ meeting (whichever the auditor may

choose).

(2) An auditor is entitled to be paid reasonable fees and

expenses by the company for making representations to

shareholders under this section.

161. (1) If an auditor resigns or ceases for any other Statement by

reason to hold office, he shall deliver to the company a person ceasing

to hold office as

statement of any circumstances connected with his ceasing auditor.

to hold office which he considers should be brought to the

attention of the shareholders or creditors of the company, or

if he considers that there are no such circumstances, a

statement that there are none.

(2) The statement required under subsection (1) shall be

delivered by the auditor —

(a) if he resigns, with the notice of resignation;

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(b) if he gives notice that he does not wish to be re-

appointed, with that notice;

(c) if he ceases to hold office for any other reason, within

ten working days of ceasing to hold office.

(3) If the auditor has stated circumstances which he

believes ought to be brought to the attention of the

shareholders or creditors, the company shall —

(a) send a copy of the statement to each shareholder;

and

(b) deliver a copy of the statement to the Registrar:

Provided that the company may with permission of court

(obtained by an order, the costs of which is to be paid by the

auditor) refrain from sending copies to shareholders or

reading the representations at the meeting so convened.

(4) Where an auditor fails to comply with subsection (1),

he shall be guilty of an offence and be liable on conviction to

a fine not exceeding two hundred thousand rupees.

(5) If a company fails to comply with subsection (3)—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding two

hundred thousand rupees; and

(b) every officer of the company who is in default shall

be guilty of an offence, and be liable on conviction

to a fine not exceeding one hundred thousand

rupees.

Auditor to avoid 162. An auditor of a company shall in carrying out the

conflict of duties of an auditor under this Act, ensure that his judgment

interest.

is not impaired by reason of any relationship with or interest

in the company or any of its subsidiaries.

Companies Act, No. 07 of 2007 129

163. (1) The auditor of a company shall make a report Auditor’s report.

to the shareholders on the financial statements audited by

him.

(2) The auditor’s report shall state—

(a) the basis of opinion;

(b) the scope and limitations of the audit;

(c) whether the auditor has obtained all information

and explanations that was required;

(d) whether in the auditor’s opinion as far as appears

from an examination of them, proper accounting

records have been kept by the company;

(e) whether in the auditor’s opinion the financial

statements and any group financial statements give

a true and fair view of the matters to which they

relate and if they do not, the respects in which they

fail to do so; and

(f) whether in the auditor’s opinion the financial

statements and any group financial statements

comply with the requirements of section 151 or

section 153, as the case may be, and if they do not,

the respects in which they fail to do so.

(3) The auditor of a company shall at the same time as he

delivers his report to the company, deliver to the company a

statement of—

(a) the existence of any relationship (other than that of

auditor) which the auditor has with, or any interests

which the auditor has in, the company or any of its

subsidiaries; and

130 Companies Act, No. 07 of 2007

(b) the amounts payable by the company to the person

or firm holding office as auditor of the company as

audit fees and expenses and as a separate item, any

fees and expenses payable by the company for other

services provided by that person or firm.

Auditor’s 164. (1) The board of a company shall ensure that an

access to auditor of a company has access at all times to the accounting

information. records and other documents of the company.

(2) An auditor of a company is entitled to require from a

director or employee of the company, such information and

explanations as he thinks necessary for the performance of

his duties as auditor.

(3) Where the board of a company fails to comply with

subsection (1), every director of the company who is in default

shall be guilty of an offence and be liable on conviction to a

fine not exceeding one hundred thousand rupees.

(4) A director or employee who fails to comply with

subsection (2) or provides false information, shall be guilty

of an offence and be liable on conviction to a fine not

exceeding one hundred thousand rupees.

(5) It is a defence to an employee charged with an offence

under subsection (4), if he proves that—

(a) he did not have the information required in his

possession or under his control; or

(b) by reason of the position occupied by him or the

duties assigned to him, he was unable to give the

explanations required.

Auditor’s 165. (1) The board of a company shall ensure that an

attendance at auditor of the company—

shareholders’

meeting.

(a) is permitted to attend every meeting of shareholders

of the company;

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(b) receives the notices and communications that a

shareholder is entitled to receive relating to a

meeting of shareholders; and

(c) may be heard at a meeting of shareholders which he

attends on any part of the business of the meeting

which concerns him as auditor.

(2) Where the board of a company fails to comply with

subsection (1), every director of the company who is in default

shall be guilty of an offence and be liable on conviction to a

fine not exceeding one hundred thousand rupees.

ANNUAL REPORT TO SHARE HOLDERS

166. (1) The board of every company shall within six Obligation to

months after the balance sheet date of the company, prepare prepare annual

an annual report on the affairs of the company during the report.

accounting period ending on that date.

(2) Where the board of a company fails to comply with

subsection (1), every director of the company who is in default

shall be guilty of an offence and be liable on conviction to a

fine not exceeding one hundred thousand rupees.

167. (1) The board of a company shall cause a copy of Sending of

the annual general meeting report to be sent to every annual report to

shareholders.

shareholder of the company not less than fifteen working

days before the date fixed for holding the annual general

meeting of shareholders :

Provided that a company may in the first instance, send

every shareholder the financial statement in the summarised

form as may be prescribed, in consultation with Institute of

Chartered Accountants of Sri Lanka, together with the annual

report:

Provided further the company shall inform each

shareholder that he is entitled to receive full financial

statement if he so requires, within a stipulated period of time.

132 Companies Act, No. 07 of 2007

(2) Where the board of a company fails to comply with

subsection (1), every director of the company shall be guilty

of an offence and be liable on conviction to a fine not

exceeding one hundred thousand rupees.

Contents of 168. (1) The annual report of the board shall be in

annual report. writing and be dated, and subject to subsection (2), shall—

(a) describe so far as the board believes is material for

the shareholders to have an appreciation of the state

of the company’s affairs and will not be harmful to

the business of the company or of any of its

subsidiaries, any change during the accounting

period in—

(i) the nature of the business of the company or

any of its subsidiaries ; or

(ii) the classes of business in which the company

has an interest, whether as a shareholder of

another company or otherwise ;

(b) include financial statements for the accounting

period completed and signed in accordance with

section 151, and any group financial statements for

the accounting period completed and signed in

accordance with section 152 ;

(c) where an auditor has been appointed by the

company, include that auditor’s report on the

financial statements and any group financial

statements ;

(d) describe any change in accounting policies made

during the accounting period ;

(e) state particulars of entries in the interests register

made during the accounting period ;

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(f) state the remuneration and other benefits of directors

during the accounting period ;

(g) state the total amount of donations made by the

company during the accounting period ;

(h) state the names of the persons holding office as

directors of the company as at the end of the

accounting period and the names of any persons

who ceased to hold office as directors of the company

during the accounting period ;

(i) state the amounts payable by the company to the

person or firm holding office as auditor of the

company as audit fees and as a separate item, fees

payable by the company for other services provided

by that person or firm ;

(j) state the particulars of any relationship (other than

that of auditor) which the auditor has with or any

interests which the auditor has in, the company or

any of its subsidaries ; and

(k) be signed on behalf of the board by-

(i) two directors of the company or if the

company has only one director, by that

director ; and

(ii) the secretary of the company.

(2) A company that is required to include group financial

statements in its annual report shall include in relation to its

subsidiaries, the information specified in paragraphs (b) to

(j) of subsection (1).

(3) The annual report of a company need not comply

with of paragraph (a) and paragraphs (d) to (j) of subsection

(1), if all shareholders agree in writing that it need not do so.

Any such agreement shall be noted in the annual report.

134 Companies Act, No. 07 of 2007

Failure to 169. Subject to the provisions contained in the articles

send reports

of a company, the failure to send an annual report, notice, or

&.

other document to a shareholder in accordance with any

requirement under this Act, shall not affect the validity of

proceedings at a meeting of the shareholders of the company,

if the failure to do so was accidental.

REGISTRATION OF FINANCIAL STATEMENTS

Registration 170. (1) Every company that is not a private company,

of financial shall ensure that within twenty working days after the financial

statements.

statements of the company and any group financial statements

are required to be signed, copies of those statements together

with a copy of the auditor’s report on those statements are

delivered to the Registrar for registration.

(2) The Registrar may by notice in writing require a private

company to deliver to him within twenty working days, the

financial statements of the company and any group financial

statements in respect of such accounting periods as may be

specified in the notice, together with copies of any auditor’s

report on those statements.

(3) The copies delivered to the Registrar under this section

shall be certified to be correct copies by two directors of the

company or where the company has only one director, by

that director.

INTERPRETATION

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Balance sheet 171. (1) Subject to the provisions of subsections (2)

date. and (3), a company shall have a balance sheet date in each

calendar year.

(2) A company shall not be required to have a balance

sheet date in the calendar year in which it is incorporated, if

its first balance sheet date is in the following calendar year

and is not later than fifteen months after the date of its

formation or incorporation.

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(3) Where a company changes its balance sheet date, it

shall be required to have a balance sheet date in a calendar

year if—

(a) the period between any two balance sheet dates does

not exceed fifteen months ; and

(b) the Registrar approves the change of balance sheet

date before it is made.

(4) The Registrar may approve a change of balance sheet

date for the purposes of subsection (3), with or without

conditions.

(5) Where a company changes its balance sheet date, the

period between any two balance sheet dates shall not exceed

fifteen months.

(6) The adoption or change of a balance sheet date shall

have effect upon receipt of a notice by the Registrar to that

effect.

(7) The board of a company shall ensure that, unless in

the board’s opinion there are good reasons against it, the

balance sheet date of each subsidiary of the company is the

same as the balance sheet date of the company.

(8) Where the balance sheet date of a subsidiary of a

company is not the same as that of the company, the balance

sheet date of the subsidiary for the purposes of any particular

group financial statements, shall be that preceding the balance

sheet date of the company.

INVESTIGATION OF COMPANY’SAFFAIRS

172. (1) The Registrar may appoint one or more Investigation of

competent inspectors to investigate the affairs of a company company’s

and to report on them in such manner as the Registrar affairs on

application of

directs—

shareholders.

(a) on the application of the company, approved by

special resolution ;

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(b) in the case of a company which has issued shares,

on the application either of not less than fifty

shareholders or of shareholders holding not less than

one-fifth of the shares issued ;

(c) in the case of a company which has not issued shares,

on the application of not less than one-fifth in

number of the persons on the company’s register of

members.

(2) An application under subsection (1) shall be supported

by such evidence as the Registrar may require, for the purpose

of showing that the applicant or applicants have good reason

for requiring the investigation.

(3) The Registrar may before appointing such inspector

and from time to time as he considers it necessary, require the

applicant or applicants to give security for payment of the

costs of the investigation.

(4) Where a person fails to furnish any amount by way of

security as and when required so to do under subsection (3),

the Registrar may in his absolute discretion direct that any

security already paid shall be forfeited, and terminate the

investigation.

Investigation 173. (1) Without prejudice to the provisions of section

of 172, the Registrar—

company’s

affairs in

other cases. (a) shall appoint one or more competent inspectors to

investigate the affairs of a company and to report

thereon in such manner as the Registrar directs,

where the court by order declares that the company’s

affairs ought to be investigated by a person

appointed by the Registrar ;

(b) may appoint one or more competent inspectors to

investigate the affairs of a company and to report

Companies Act, No. 07 of 2007 137

thereon to the Registrar, if it appears to him that

there are circumstances suggesting that—

(i) its business is being conducted with intent to

defraud its creditors or the creditors of any

other person, or otherwise for a fraudulent or

unlawful purpose, or in a manner which is

unfairly prejudicial to any part of its

shareholders ;

(ii) it was formed for any fraudulent or unlawful

purpose ;

(iii) persons concerned with its formation or the

management of its affairs have in connection

therewith been guilty of fraud, misfeasance

or other misconduct towards it or towards its

shareholders ;

(iv) its shareholders have not been given all the

information with respect to its affairs which

they might reasonably expect ; or

(v) it is necessary to do so for any of the purposes

of this Act.

(2) An inspector may be appointed under this section on

the condition that any report that he makes is not for

publication, and in any such case subsection (3) of section

176 shall not apply to such reports.

174. Where an inspector appointed under section 172 Power of

or section 173 to investigate the affairs of a company, considers inspectors to

carry out

it necessary for the purposes of this investigation to investigate investigation

also the affairs of any other body corporate which is or has at into affairs of

any relevant time been the company’s subsidiary or holding related

company or a subsidiary of its holding company, he shall companies.

with the prior written approval of the Registrar have power to

do so, and shall report on the affairs of the other body corporate

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so far as he thinks the results of his investigation of its affairs

are relevant to the investigation of the affairs of the first-

mentioned company.

Production of 175. (1) Where an inspector is appointed under section

documents and 172 or section 173, it shall be the duty of all directors, officers

evidence at

and agents of the company and of all directors, officers and

investigation.

agents of any other body corporate whose affairs are

investigated by virtue of section 174 to —

(a) produce to the inspector all books and documents

of or relating to the company or, as the case may be,

the other body corporate, which are in their custody

or power ;

(b) attend before the inspector when required to do so ;

and

(c) give to the inspector all assistance in connection

with the investigation which they are reasonably

able to give.

(2) An inspector may examine on oath or affirmation the

officers and agents of the company or other body corporate

in relation to its business, and may administer an oath to or

take the affirmation of any such person.

(3) Where any officer or agent of the company or other

body corporate refuses to produce to the inspector any book

or document which it is his duty under this section to produce,

or refuses to answer any question which is put to him by the

inspector with respect to the affairs of the company or other

body corporate, as the case may be, the inspector may certify

the refusal in writing to the court, and the court may inquire

into the case and after hearing any witnesses who may be

produced against or on behalf of the alleged offender and

after hearing any statement which may be offered in defence,

punish the offender as if he had been guilty of contempt of

court.

Companies Act, No. 07 of 2007 139

(4) Where an inspector thinks it necessary for the purpose

of his investigation that a person whom he has no power to

examine on oath or affirmation should be so examined, he

may apply to the court and the court may if it thinks fit, order

that person to attend and be examined on oath or affirmation

before it on any matter relevant to the investigation. On any

such examination—

(a) the inspector may appear either personally or be

represented by an attorney-at-law ;

(b) the court may put such questions to the persons

examined as the court thinks fit ;

(c) the person examined shall answer all such questions

as the court may put or allow to be put to him ;

(d) the person examined may at his own cost be

represented by an attorney-at-law who may put

questions to him for the purpose of enabling him to

explain or qualify any answers given by him ;

(e) the examination shall be recorded in writing and

the person examined shall sign the record ; and

(f) subject to any directions by the court, the record of

an examination under this section shall be

admissible in evidence in any proceedings under

this Act.

(5) Notwithstansing anything contained in paragraph (d)

of subsection (4), the court may allow the person examined

such costs as it thinks fit. Any costs so allowed shall be paid

as part of the expenses of the investigation.

(6) In this section, any reference to officers or to agents

shall include past as well as present officers or agents, as the

case may be, and the expression “agents” in relation to a

company or other body corporate, shall include its bankers

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and attorneys-at-law and any persons employed by it as

auditors, whether those persons are or are not officers of the

company or other body corporate.

Inspector’s 176. (1) An inspector—

report.

(a) may and if so directed by the Registrar shall, make

interim reports to the Registrar in the course of an

investigation ;

(b) shall on the conclusion of an investigation, make a

final report in writing to the Registrar.

(2) Where an inspector was appointed under section 173

in pursuance of an order of court, the Registrar shall furnish a

copy of any report made by such inspector to the court.

(3) The Registrar may if he thinks fit—

(a) forward a copy of any report made by the inspector

to the registered office of the company ;

(b) furnish a copy of any report on request and on

payment of the prescribed fee to—

(i) any shareholder of the company or of any

other body corporate dealt with in the report

by virtue of section 174 ;

(ii) any person whose conduct is referred to in

the report ;

(iii) the auditors of the company or body

corporate;

(iv) the applicants for the investigation ;

(v) any other person whose financial interests

appear to the Registrar to be affected by the

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matters dealt with in the report, whether as a

creditor of the company or body corporate or

otherwise ;

(c) cause the report to be printed and published.

177. (1) Where from any report made under section 176 Proceedings on

it appears to the Registrar that any person has in relation to inspector’s

report.

the company or to any other body corporate whose affairs

have been investigated under section 174, been guilty of any

offence for which he is criminally liable, the Registrar shall,

if it appears to him that the case is one in which the prosecution

ought to be undertaken by the Attorney-General, refer the

matter to the Attorney-General.

(2) Where in any matter referred to the Attorney-General

under subsection (1) the Attorney-General considers that the

case is one in which a prosecution ought to be instituted, he

shall institute proceedings accordingly and it shall be the

duty of all officers and agents of the company or other body

corporate, as the case may be, (other than the defendant in

the proceedings) to give him all assistance in connection

with the prosecution which they are reasonably able to give.

The provisions of subsection (6) of section 175 shall apply

for the purposes of this subsection as they apply for the

purposes of that section.

(3) Where in the case of any body corporate a liquidator

of which may be appointed under this Act, it appears to the

Registrar from any report made under the provisions of section

176 that it is expedient so to do by reason of any such

circumstances as are referred to in sub-paragraph (i) or sub-

paragraph (ii) of paragraph (b) of subsection (1) of section

173, the Registrar may apply to the court to appoint a

liquidator.

(4) Where from any report made under section 176 it

appears to the Registrar that proceedings ought in the public

interest to be brought by any body corporate, he may bring

such proceedings in the name and on behalf of the body

corporate.

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(5) The Registrar shall indemnify the body corporate

against any costs or expenses incurred by it in or in connection

with any proceedings brought under subsection (4).

Expenses of 178. (1) The expenses of and incidental to an

investigation

investigation by an inspector appointed by the Registrar

of

company’s under section 172 or section 173 shall be met in the first

affairs. instance by the Registrar.

(2) The following person shall, to the extent specified, be

liable to repay the Registrar—

(a) any person who is convicted on a prosecution

instituted as a result of the investigation by the

Attorney-General, or who is ordered to pay the whole

or any part of the costs of proceedings brought under

subsection (4) of section 177, may in the same

proceedings be ordered to pay the said expenses to

such extent as may be specified in the order ;

(b) any body corporate in whose name proceedings are

brought under subsection (4) of section 177 shall

be liable to the amount or value of any sum or

property recovered by it as a result of those

proceedings and the amount for which the body

corporate is liable shall be a first charge on the sum

or property recovered ; and

(c) unless as a result of the investigation a prosecution

is instituted by the Attorney-General—

(i) any body corporate dealt with by the report

where the inspector was appointed otherwise

than of the Registrar’s own motion, shall be

liable except so far as the Registrar otherwise

directs ; and

(ii) any person making an application for the

investigation where the inspector was

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appointed under section 172, shall be liable

to such extent, if any, as the Registrar may

direct.

(3) The report of an inspector appointed otherwise than

of the Registrar’s own motion may if he thinks fit, and shall if

the Registrar so directs, include a recommendation as to the

directions (if any) which the inspector thinks appropriate to

be given under the provisions of paragraph (c) of subsection

(2) .

(4) For the purposes of this section, any costs or expenses

incurred by the Registrar in or in connection with proceedings

brought under subsection (4) of section 177 (including

expenses incurred under subsection (5) of that section) shall

be treated as expenses of the investigation giving rise to the

proceedings.

(5) Any liability to repay the Registrar imposed by the

provisions of paragraphs (a) and (b) of subsection (2) shall,

subject to satisfaction of the Registrar’s right to repayment,

be a liability also to indemnify all persons against liability

under the provisions of paragraph (c) of subsection (2), and

any such liability imposed by the provisions of paragraph

(a) shall, subject to as aforesaid, be a liability also to

indemnify all persons against liability under the provisions

of paragraph (b).

(6) Any person liable under the provisions of paragraph

(a) or paragraph (b) or sub-paragraph (i) or sub-paragraph (ii)

of paragraph (c) of subsection (2), shall be entitled to

contribution from any other person liable under the same

paragraph or sub-paragraph, as the case may be, according to

the amount of their respective liabilities under it.

(7) The expenses to be met by the Registrar under this

section shall so far as not recovered by him under it, be paid

out of moneys provided by Parliament for the purpose.

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Inspector’s 179. A copy of any report of an inspector appointed

report to be under section 172 or section 173 shall be admissible in any

evidence.

legal proceedings as evidence of the opinion of the inspector

in relation to any matter contained in the report.

Appointment 180. (1) Where it appears to the Registrar that there is

and powers of good reason so to do, he may appoint one or more inspectors

inspectors to

to investigate and report on the ownership of the shares of the

investigate

ownership of company and otherwise with respect to the company, for the

company. purpose of determining the true persons who are or have

been financially interested in the success or failure (real or

apparent) of the company or able to control or materially to

influence its policy.

(2) The appointment of an inspector under this section

may define the scope of his investigation whether as respects

the matters or the period to which it is to extend or otherwise,

and in particular may limit the investigation to matters

connected with particular shares or debentures.

(3) Subject to the terms of appointment of an inspector,

his powers shall extend to the investigation of any

circumstances suggesting the existence of an arrangement or

understanding which, though not legally binding, is or was

observed or likely to be observed in practice and which is

relevant to the purposes of his investigation.

(4) Where an application for an investigation under the

provisions of this section with respect to particular shares or

debentures of a company is made to the Registrar by

shareholders of the company, and the number of applicants

or the amount of the shares held by them is not less than that

which is required for an application for the appointment of

an inspector under sub-paragraph (b) or (c) of subsection (1)

of section 172, the Registrar shall subject to the provisions

of subsections (5) and (6) appoint an inspector to conduct

the investigation. Where an inspector is appinted his terms of

appointment shall exclude any matter which the Registrar is

satisfied it is unreasonable to investigate.

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(5) The Registrar shall not appoint an inspector under

subsection (4) if he considers that the application is

vexatious.

(6) Where on an application under subsection (4) it

appears to the Registrar that the powers conferred by section

181 are sufficient for the purpose of investigating the matters

which it is sought to have investigated, he may instead

conduct the investigation under that section.

(7) For the purposes of an investigation under the

provisions of this section, the provisions of sections 174,

175 and 176 shall apply with the necessary modifications of

references to the affairs of the company or to those of any

other body corporate, subject to the provisions of subsections

(8) and (9).

(8) Sections 174, 175 and 176 shall apply in relation to

all persons who are or have been or whom the inspector has

reasonable cause to believe to be or have been, financially

interested in the success or failure or the apparent success or

failure of the company or any other body corporate whose

ownership is investigated with that of the company, or able to

control or materially to influence its policy including persons

concerned only on behalf of others, as they apply in relation

to the officers and agents of the company or of the other body

corporate, as the case may be.

(9) Where the Registrar considers that there is good reason

not to divulge any part of a report made under this section, he

may disclose the report under section 176 with the omission

of that part.

(10) The expenses of an investigation made under this

section shall be met by the Registrar out of moneys provided

by Parliament for the purpose.

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Power to 181. (1) Where it appears to the Registrar that there is

require

good reason to investigate the ownership of any shares in or

information

as to persons debentures of a company and that it is unnecessary to appoint

interested in an inspector for the purpose, the Registrar may require any

shares or

person whom he has reasonable cause to believe—

debentures.

(a) to be or to have been interested in those shares or

debentures; or

(b) to act or to have acted in relation to those shares or

debentures as the attorney or agent of any person

interested in them,

to give the Registrar any information which he has or can

reasonably be expected to obtain, as to the present and past

interests in those shares or debentures and the names and

addresses of the persons interested, and of any person who

act or have acted on their behalf in relation to the shares or

debentures.

(2) For the purposes of this section a person shall be

deemed to have an interest in shares or debentures, if he has

any right to acquire or dispose of them or of any interest in

them or to vote in respect of them, or if his consent is necessary

for the exercise of any rights of other persons interested in

them, or if other persons interested in them can be required

or are accustomed to exercise their rights in accordance with

his instructions.

(3) Any person who fails to give information required of

him under subsection (1), or who in giving any such

information makes any statement which he knows to be false

in a material particular, or recklessly makes any statement

which is false in a material particular, shall be guilty of an

offence and be liable on conviction to a fine not exceeding

one million rupees or to an imprisonment for a term not

exceeding five years or to both such fine and imprisonment.

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182. (1) Where in connection with an investigation Power to impose

under the provisions of section 180 or section 181, it appears restrictions on

shares or

to the Registrar that there is difficulty in finding out the debentures.

relevant facts about any shares (whether issued or to be issued),

and that the difficulty is due wholly or mainly to the

unwillingness of the persons concerned or any of them to

assist the investigation as required by the Registrar, the

Registrar may by order direct that the shares shall until further

order, be subject to the restrictions imposed by this section.

(2) So long as any shares are directed to be subject to the

restrictions imposed by this section —

(a) any transfer of those shares or in the case of unissued

shares any transfer of the right to be issued with

them and any issued of them, shall be void;

(b) no voting rights shall be exercisable in respect of

those shares;

(c) no further shares shall be issued in right of those

shares or pursuant to any offer made to the holder of

them;

(d) except in a liquidation, no payment shall be made

on any sums due from the company on those shares,

whether in respect of capital or otherwise.

(3) Where the Registrar makes an order directing that

shares shall be subject to the restriction set out in subsection

(2), or refuses to make an order directing that shares shall

cease to be subject to those restrictions, any person aggrieved

by the order may appeal to the court against the order under

section 472. The court may, if it thinks fit, direct that the

shares shall cease to be subject to those restrictions.

(4) Any order made by the Registrar or the court directing

that shares shall cease to be subject to the restrictions set out

in subsection (2) which is expressed to be made with a view

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to permitting a transfer of those shares, may continue the

restrictions specified in paragraphs (c) and (d) of subsection

(2) either in whole or in part, so far as they relate to any right

acquired or offer made before the transfer.

(5) Any person who—

(a) exercises or purports to exercise any right to dispose

of any shares which, to his knowledge, are for the

time being subject to the restrictions specified in

subsection (2) or of any right to be issued with any

such shares;

(b) votes in respect of any such shares whether as holder

or proxy, or appoints a proxy to vote in respect of

them; or

(c) being the holder of any such shares fails to notify of

the restrictions to any person whom he does not

know to be aware of them but does know to be

entitled, apart from the restrictions to vote in respect

of those shares, whether as holder or proxy,

shall be guilty of an offence and be liable on conviction to a

fine not exceeding five hundred thousand rupees or to a term

of imprisonment of a term not exceeding two years or to both

such fine and imprisonment.

(6) Where shares in any company are issued in

contravention of the restrictions specified in subsection (2)—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding two

hundred thousand rupees; and

(b) every officer of the company who is in default shall

be guilty of an offence and be liable on conviction

to a fine not exceeding one hundred thousand

rupees.

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(7) A prosecution shall not be instituted under this section

except by or with the consent of the Registrar.

(8) The provisions of this section shall apply in relation

to debentures as it applies in relation to shares.

183. The Registrar shall have the power to verify the assets Registrar’s

and liabilities of any company. powers to verify

assets and

liabilities.

POWERS OF MANAGEMENT

184. Subject to the provisions contained in the articles Management of

of a company— company.

(a) the business and affairs of a company shall be

managed by or under the direction or supervision of

the board of the company;

(b) the board of a company shall have all the powers

necessary for managing and for directing and

supervising the management of, the business and

affairs of the company.

185. (1) A company shall not enter into any major Major

transaction, unless such transaction is— transactions.

(a) approved by special resolution;

(b) contingent on approval by special resolution;

(c) consented to in writing by all the shareholders of

the company; or

(d) a transaction which the company is expressly

authorised to enter into by a provision in its articles,

which was included in it at the time the company

was incorporated.

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(2) In this section the reference to—

“assets” includes property of any kind, whether

corporal or incorporeal;

“major transaction”, means—

(a) the acquisition of or an agreement to acquire

whether contingent or not, assets of a value

which is greater than half the value of the assets

of the company before the acquisition;

(b) the disposition of an agreement to dispose of,

whether contingent or not, the whole or more

than half by value of the assets of the company;

(c) a transaction which has or is likely to have the

effect of the company acquiring rights or

interests or incurring obligations or liabilities

of a value which is greater than half the value

of the assets before the acquisition; or

(d) a transaction or series of related transactions

which have the purpose or effect of substantially

altering the nature of the business carried on by

the company.

(3) Nothing in this section shall apply to—

(a) a transaction under which a company gives or agrees

to give a floating charge over all or any part of the

property of the company;

(b) a transaction entered into by a receiver appointed

pursuant to an instrument creating a floating charge

over all or any part of the property of a company;

(c) a transaction entered into by an administrator or

liquidator of a company.

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186. (1) Subject to any restrictions contained in the Delegation of

provisions of the articles of the company, the board of a powers.

company may delegate to a committee of directors, a director

or employee of the company or any other person, any one or

more of its powers other than its powers under any of the

sections of this Act specified in the Sixth Schedule.

(2) A board that delegates a power under subsection (1)

shall be responsible for the exercise of the power by the

delegate as if the power had been exercised by the board,

where—

(a) the board had reason to believe before the exercise

of the power, that the delegate would not exercise

the power in conformity with the duties imposed on

directors of the company by this Act and the

company’s articles; or

(b) the board has failed to monitor by means of

reasonable methods properly used, the exercise of

the power by the delegate.

DIRECTORS’ DUTIES

187. (1) A person exercising powers or performing duties Duty of directors

as a director of a company shall act in good faith, and subject to act in good

to subsection (2), in what that person believes to be in the faith and in the

interests of

interests of the company. company.

(2) A director of a company which is a wholly owned

subsidiary of another company may, if expressly permitted

to do so by the company’s articles, act in a manner which he

believes is in the interest of that other company even though

it may not be in the interests of the company of which he is a

director.

188. A director of a company shall not act or agree to the Directors to

company acting, in a manner that contravenes any provisions comply with Act

and company’s

of this Act, or the provisions contained in the articles of the

articles.

company.

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Directors 189. A person exercising powers or performing duties

standard of care. as a director of a company—

(a) shall not act in a manner which is reckless or grossly

negligent; and

(b) shall exercise the degree of skill and care that may

reasonably be expected of a person of his knowledge

and experience.

Use of 190. (1) Subject to the provisions of subsection (2), a

information and director of a company may rely on reports, statements, and

advice. financial data and other information prepared or supplied,

and on professional or expert advice given by any of the

following persons :—

(a) an employee of the company;

(b) a professional adviser or expert in relation to matters

which the director believes to be within the person’s

professional or expert competence;

(c) any other director or committee of directors in which

the director did not serve, in relation to matters

within the directors or committee’s designated

authority.

(2) Provisions of subsection (1) shall apply to a director,

if, and only if, the director—

(a) acts in good faith;

(b) makes proper inquiry where the need for inquiry is

indicated by the circumstances; and

(c) has no knowledge that such reliance is unwarranted.

(3) The provisions contained in this Act are in addition

to and not in derogation of any provisions contained in any

other law relating to the duty or liability of directors or officers

of a company.

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TRANSACTIONS IN WHICH ADIRECTOR IS INTERESTED

191. (1) Subject to the provisions of subsection (2), for Meaning of

the purposes of this Act a director of a company is interested “interested”.

in a transaction to which the company is a party if, and only

if, the director—

(a) is a party to or will or may derive a material financial

benefit from the transaction.;

(b) has a material financial interest in another party to,

the transaction;

(c) is a director, officer or trustee of another party to or

person who will or may derive a material financial

benefit from the transaction, not being a party or

person that is—

(i) the company’s holding company being a

holding company of which the company is a

wholly-owned subsidiary;

(ii) a wholly owned subsidiary of the company;

or

(iii) a wholly-owned subsidiary of a holding

company of which the company is also a

wholly-owned subsidiary;

(d) is the parent, child, or spouse of another party to or

person who will or may derive a material financial

benefit from the transaction; or

(e) is otherwise directly or indirectly materially

interested in the transaction.

(2) A director of a company is not deemed to be interested

in a transaction to which the company is a party, if the

transaction comprises only of the giving by the company of

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security to a third party which has no connection with the

director at the request of the third party, in respect of a debt or

obligation of the company for which the director or another

person has personally assumed responsibility in whole or in

part under a guarantee, indemnity or by the deposit of a

security.

Disclosure of 192. (1) A director of a company shall, forthwith after

interest. becoming aware of the fact that he is interested in a transaction

or proposed transaction with the company, cause to be entered

in the interests register and if the company has more than one

director, disclosed to the board of the company, the nature

and extent of that interest.

(2) For the purposes of subsection (1), a general notice

entered in the interests register or disclosed to the board to

the effect that a director is a shareholder, director, officer or

trustee of another named company or other person or is

otherwise connected with another named company or other

person, and is to be regarded as interested in any transaction

which may after the date of the entry or disclosure be entered

into with that company or person, shall be a sufficient

disclosure of interest in relation to any transaction with that

company or person.

(3) A failure by a director to comply with the requirements

of subsection (1) shall not affect the validity of a transaction

entered into by the company or the director.

(4) Every director who fails to comply with the

requirements of subsection (1) shall be guilty of an offence,

and be liable on conviction to a fine not exceeding two

hundred thousand rupees.

Avoidance of 193. (1) A transaction entered into by the company in

transaction. which a director of the company is interested, may be avoided

by the company at any time before the expiration of six months

after the transaction, and the director’s interest in it have

been disclosed to all the shareholders (whether by means of

the company’s annual report or otherwise).

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(2) A transaction shall not be avoided under this section

if the company receives fair value under it.

(3) For the purposes of subsection (2), the question

whether a company receives fair value under a transaction

shall be determined on the basis of the information known to

the company and to the interested director, at the time the

transaction is entered into.

(4) If a transaction is entered into by the company in the

ordinary course of its business and on usual terms and

conditions, the company shall be presumed to have received

fair value under the transaction.

(5) For the purposes of this section —

(a) a person seeking to uphold a transaction and who

knew or ought to have known of the director’s

interest at the time the transaction was entered into,

shall have the burden of establishing fair value; and

(b) in any other case, the company shall have the burden

of establishing that it did not receive fair value.

(6) A transaction in which a director is interested shall

not be avoided on the ground of the director’s interest, other

than pursuant to this section or the company’s articles.

194. The avoidance of a transaction under section 193 Effect on third

shall not affect the title or interest of a person in or to property parties.

which that person has acquired, if the property was acquired—

(a) from a person other than the company;

(b) for valuable consideration; and

(c) in good faith without notice of the circumstances as

a consequence of which the transaction becomes

voidable.

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Non- application 195. Nothing contained in sections 192 and 193 shall

of sections 192

apply in relation to—

and 193 in

certain cases.

(a) remuneration or any other benefit given to a director

in accordance with section 216; or

(b) an indemnity given or insurance provided in

accordance with section 218.

Interested 196. Subject to the provisions contained in the articles

director may of the company, a director of a company who is interested in

vote.

a transaction entered into or to be entered into by the

company, may—

(a) vote on a matter relating to the transaction;

(b) attend a meeting of directors at which a matter

relating to the transaction arises and be included

among the directors present at the meeting for the

purpose of a quorum;

(c) sign a document relating to the transaction on behalf

of the company; and

(d) do any other thing in his capacity as a director in

relation to the transaction,

as if the director were not a party interested in that transaction.

Use of company 197. (1) A director of a company who has information

information. in his capacity as a director or employee of the company

which would not otherwise be available to him, shall not

disclose that information to any person or make use of or act

on the information, except—

(a) for the purposes of the company;

(b) as required by law;

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(c) in accordance with subsection (2); or

(d) in any other circumstances in which the company’s

articles authorise the director to do so.

(2) A director of a company may disclose, make use of or

act on information, if—

(a) the director is first authorised to do so by the board

under subsection (3); and

(b) particulars of the authorisation are entered in the

interests register.

(3) The board authorise a director to disclose, make use

of or act on information, if it is satisfied that to do so will not

be likely to prejudice the company.

DISCLOSURE OF DIRECTORS’ INTERESTS IN SHARES

198. (1) For the purposes of section 200, a director of a Meaning of

company has a relevant interest in a share issued by a “relevant

interest”.

company (whether or not the director is registered in the

share register as the holder of it) if the director—

(a) is a beneficial owner of the share;

(b) has the power to exercise any right to vote attached

to the share;

(c) has the power to control the exercise of any right to

vote attached to the share;

(d) has the power to acquire or dispose of the share;

(e) has the power to control the acquisition or

disposition of the share by another person; or

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(f) under or by virtue of any trust, agreement,

arrangement or understanding relating to the share

(whether or not that person is a party to it) may at

any time have the power to—

(i) exercise any right to vote attached to the

share;

(ii) control the exercise of any right to vote

attached to the share;

(iii) acquire or dispose of the share; or

(iv) control the acquisition or disposition of the

share by another person.

(2) Where a person (whether or not a director of the

company) has a relevant interest in a share by virtue of

subsection (1), and—

(a) that person or its directors are accustomed or under

an obligation, whether legally enforceable or not,

to act in accordance with the directors, instructions,

or wishes of a director of the company in relation

to—

(i) the exercise of the right to vote attached to

the share;

(ii) the control of the exercise of any right to

vote attached to the share;

(iii) the acquisition or disposition of the share; or

(iv) the exercise of the power to control the

acquisition or disposition of the share by

another person;

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(b) a director of the company has the power to exercise

the right to vote attached to twenty per centum or

more of the shares of that person;

(c) a director of the company has the power to control

the exercise of the right to vote attached to twenty

per centum or more of the shares of that person;

(d) a director of the company has the power to acquire

or dispose of twenty per centum or more of the shares

of that person; or

(e) a director of the company has the power to control

the acquisition or disposition of twenty per centum

or more of the shares of that person,

that director has a relevant interest in the share.

(3) A person who has or may have a power referred to in

paragraphs (b) to (f) of subsection (1), has a relevant interest

in a share, regardless of whether the power is—

(a) expressed or implied;

(b) direct or indirect ;

(c) legally enforceable or not ;

(d) related to a particular share or not;

(e) subject to restraint or restriction or is capable of

being made subject to restraint or restriction ;

(f) exercisable presently or in the future;

(g) exercisable only on the fulfillment of a condition;

(h) exercisable along or jointly with another person or

persons.

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(4) A power referred to in subsection (1) exercisable

jointly with another person or persons, is deemed to be

exercisable by either or any of those persons.

(5) A reference to a power in this section includes a

reference to a power that arises from or is capable of being

exercised as the result of a breach of any trust, agreement,

arrangement or understanding or any of them, whether or not

it is legally enforceable.

Relevant 199. (1) For the purposes of section 200, no account

interests to be shall be taken of a relevant interest of a person in a share, if—

disregarded in

certain cases.

(a) the ordinary business of the person who has the

relevant interest consists of or includes the lending

of money or the provision of financial services or

both, and that person has the relevant interest only

as security given for the purposes of a transaction

entered into in the ordinary course of the business

of that person;

(b) that person has the relevant interest by reason only

of acting for another person to acquire or dispose of

that share on behalf of the other person;

(c) that person has the relevant interest solely by reason

of being appointed as a proxy to vote at a particular

meeting of members or of a class of members, of the

company;

(d) that person—

(i) is a trustee corporation or a nominee

company; and

(ii) has the relevant interest by reason only of

acting for another person in the ordinary

course of business of that trustee corporation

or nominee company; or

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(e) the person has the relevant interest by reason only

of the fact that the person is a trustee of a trust to

which the share is subject.

(2) For the purposes of paragraph (e) of the subsection

(1), a person may be a trustee notwithstanding that he is

entitled as a trustee to be remunerated out of the income or

property of the trust.

200. (1) A person who— Disclosure of

share dealing by

directors.

(a) is a director of a company on the appointed date; or

(b) becomes a director of a company thereafter,

and who has a relevant interest in any shares issued by the

company, shall forthwith—

(c) disclose to the board the number and class of shares

in which the relevant interest is held and the nature

of the relevant interest; and

(d) ensure that the particulars disclosed to the board

under paragraph (c) are entered in the interests

register.

(2) A director of a company who acquires or disposes of a

relevant interest in shares issued by the company shall,

forthwith after the acquisition or disposition—

(a) disclose to the board—

(i) the number and class of shares in which the

relevant interest has been acquired or the

number and class of shares in which the

relevant interest was disposed of, as the case

may be;

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(ii) the nature of the relevant interest;

(iii) the consideration paid or received; and

(iv) the date of the acquisition or disposition; and

(b) ensure that the particulars disclosed to the board

under paragraph (a) are entered in the interests

register.

APPOINTMENT AND REMOVAL OF DIRECTORS

Number of 201. A company shall have at least one director, except

directors.

a public company which should have at least two directors.

Qualification of 202. (1) Any person who is not disqualified under

directors. subsection (2) of this section, may be appointed as a director

of a company.

(2) The following persons shall be disqualified from being

appointed or holding office as director of a company—

(a) a person who is under eighteen years of age;

(b) a person who is an undischarged insolvent;

(c) a person who is or would be prohibited from being a

director of or being concerned or taking part in the

promotion, formation or management of a company,

under the Companies Act, No. 17 of 1982, but for

the repeal of that Act;

(d) a person who is prohibited from being a director or

promoter of or being concerned or taking part in the

management of a company under section 213 or

section 214 of this Act;

(e) a person who has been adjudged to be of unsound

mind;

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(f) a person that is not a natural person;

(g) in relation to any particular company, a person who

does not comply with any qualifications for directors

contained in the articles of that company.

(3) A person who is disqualified from being a director but

who acts as a director, shall be treated as a director for the

purposes of any provision of this Act that imposes a duty or

any obligation on a director of a company.

203. A person shall not be appointed as director of a Director’s

company unless he has, in the prescribed form— consent required.

(a) consented to be a director; and

(b) certified that he is not disqualified from being

appointed or holding office as a director of a

company.

204. (1) A person named as a director in an application Appointment of

for incorporation or in an amalgamation proposal, shall hold first and

subsequent

office as a director from the date of incorporation or from the

directors.

date the amalgamation proposal becomes effective, as the

case may be, until that person ceases to hold office as a director

in accordance with the provisions of this Act.

(2) All subsequent directors of a company shall, unless

the articles of the company otherwise provide, be appointed

by ordinary resolution.

205. (1) Subject to the provisions contained in the Appointment of

articles of the company, the shareholders of a company that directors to be

voted on

is not a private company may vote on a resolution to appoint individually.

a director of the company, only if—

(a) the resolution is for the appointment of one director;

or

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(b) the resolution is a single resolution for the

appointment of two or more persons as directors of

the company, and a separate resolution that it be so

voted on has first been passed without a vote being

cast against it.

(2) A resolution moved in contravention of the provisions

of subsection (1) shall be void, even if the moving of it was

not objected to at the time.

(3) The provisions of subsection (2) shall not limit the

operation of the provisions contained in section 209 of this

Act.

(4) No provision for the automatic reappointment of

retiring directors in default of another appointment, shall

apply on the passing of a resolution in contravention of

subsection (1).

(5) Nothing in this section shall prevent the election of

two or more directors by ballot or poll.

Removal of 206. (1) Subject to the provisions contained in the articles

directors. of a company, a director may be removed form office by ordinary

resolution passed at a meeting called for the purpose or for

purposes that include the removal of the director.

(2) The notice calling the meeting shall state that the

purpose or a purpose of the meeting is the removal of the

director.

(3) Where notice is given of an intended resolution to

remove a director and the director concerned makes

representations within a period of fourteen days of such notice

with a request to send copies to all shareholders, the company

shall send copies of the said representations to all shareholders.

If the representations are not sent due to the company’s default,

the director concerned may require that the representations

be read at the meeting :

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Provided that the company may with permission of court

obtained on an order for costs to be paid by the director

concerned, refrain from either sending such representations

to the shareholders or reading the said representations at the

meeting, where the company is able to satisfy court that the

provisions of this section are being abused by the director

concerned to secure unnecessary publicity for a defamatory

matter.

207. (1) The office of director of a company shall be Director ceasing

vacated if the director— to hold office.

(a) resigns from his office in accordance with subsection

(2);

(b) is removed from office in accordance with the

provisions of this Act or the articles of the company;

(c) becomes disqualified from being a director in terms

of the provisions of section 202;

(d) dies;

(e) vacates office pursuant to subsection (2) of section

210; or

(f) otherwise vacates office in accordance with the

articles of the company.

(2) A director of a company may resign by signing a

written notice of resignation and delivering it to the registered

office of the company. Subject to the provisions of section

208, the notice is effective when it is received at the registered

office or at a later time specified in the notice.

208. (1) Where a company has only one director, that Resignation of

director may not resign office until that director has called a last remaining

meeting of shareholders to receive notice of the resignation, director.

and to appoint one or more new directors.

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(2) Notwithstanding its terms, a notice of resignation

given by the sole director of a company shall not take effect

until the date of the meeting of shareholders, called in

accordance with subsection (1).

Validity of 209. The acts of a person as a director shall be valid

director’s notwithstanding the fact that —

acts.

(a) the person’s appointment was defective; or

(b) the person is not qualified for such appointment.

RETIRING AGE OF DIRECTORS.

Age limit for 210. (1) Subject to the provisions of section 211, no

directors. person shall be capable of being appointed a director of a

public company or of a private company which is a subsidiary

of a public company, if he has attained the age of seventy

years.

(2) Subject to the provisions of section 211, a director of

a public company or of a private company which is a

subsidiary of a public company, shall vacate office —

(a) at the conclusion of the annual general meeting

commencing next after he attains the age of seventy

years;

(b) if he is reappointed as a director after attaining the

age of seventy years, at the annual general meeting

following that reappointment.

(3) Where a person retires from office under the provisions

of subsection (2), no provision for the automatic

reappointment of retiring directors in default of another

appointment shall apply and if at the meeting at the

conclusions of which he retires the vacancy is not filled, it

may be filled as a casual vacancy.

(4) In this section “public company” means a limited

company which is not a private company.

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211. (1) Nothing in section 210 shall prevent the

appointment of a director who has attained the age of

seventy years, or require a director who has attained that

age to retire, if his appointment is or was made or approved

by a resolution passed by the company at a general meeting

which declares that the age limit referred to in section 210

shall not apply to that director, However, any resolution

approved at a general meeting will be valid only for one

year from his appointment.

(2) A notice of any resolution referred to in subsection

(1) which is given to the company or by the company to its

shareholders, shall state the age of the person to whom it

relates.

212. (1) Any person who is appointed or to his

knowledge is proposed to be appointed director of a company

at a time when he has attained the age of seventy years or

such lower age, if any, as may be specified in the company’s

articles, shall give notice of his age to the company.

(2) Provisions of subsection (1) shall not apply in relation

to a person’s reappointment on the termination of a previous

appointment as a director of the company, where notice has

been given by that person under subsection (1) on any

previous occasion.

(3) Any person who—

(a) fails to give notice of his age as required by the

provisions of subsection (1); or

(b) acts as director under any appointment which is

invalid or which has terminated by reason of his

age,

shall be guilty of an offence and be liable on conviction to a

fine not exceeding fifty thousand rupees.

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(4) For the purposes of paragraph (b) of subsection (3), a

person who has acted as a director under an appointment

which is invalid or has terminated, shall be deemed to have

continued so to act throughout the period from the date of

the invalid appointment or the date on which the appointment

terminated, as the case may be, until the last day on which he

acted thereunder.

DISQUALIFICATION OF DIRECTORS

Persons 213. (1) Where a person—

prohibited from

managing

companies. (a) has been convicted of any offence under this Act

which is punishable by imprisonment;

(b) has been convicted of an offence involving dishonest

or fraudulent acts;

(c) is adjudged insolvent under the Insolvency

Ordinance (Cap. 97); or

(d) adjudged to be of unsound mind,

such person shall not, during the period of five years after the

conviction or adjudication, as the case may be, be a director

or promoter of or in any way, whether directly or indirectly,

be concerned or take part in the management of a company,

unless that person first makes an application to obtain the

leave of the court. Leave may be given on such terms and

conditions as the court thinks fit.

(2) A person intending to apply for the leave of court

under this section, shall give to the Registrar not less than

ten days’ notice of his intention to apply for such leave.

(3) The Registrar and such other persons as the court thinks

fit, may attend and be heard at the hearing of any application

under this section.

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(4) A person who acts in contravention of this section or

of any order made under this section, shall be guilty of an

offence and be liable on conviction to a fine not exceeding

one million rupees or to a term of imprisonment not exceeding

five years or to both such fine and imprisonment.

(5) In this section, the term “company” includes an

overseas company which carries on business in Sri Lanka.

214. (1) Where a person— Court may

disqualify

directors.

(a) is prohibited from being a director of company under

section 213;

(b) while a director of a company, has persistently failed

to comply with the provisions of this Act;

(c) has been convicted of an offence of involving

dishonest or fraudulent acts in a country other than

Sri Lanka; or

(d) was a director of a company which became insolvent

and that person’s conduct as a director of that

company or of any other company makes that person

unfit to be a director of a company,

the court may make an order that the person shall not, without

leave of court, be a director or promoter of or in any way

whether directly or indirectly be concerned or take part in

the management of a company, for such period not exceeding

ten years as may be specified in the order.

(2) A person intending to apply for an order under this

section shall give not less than ten working days’ notice of

that intention to the person against whom the order is sought.

On the hearing of the application the person against whom

the order is sought, may appear and give evidence or call

witnesses.

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(3) An application for an order under this section may be

made by the Registrar or by a liquidator or an administrator

of a company of which the person against whom the order is

sought was a director, or by a person who is or has been a

shareholder or creditor of any such company.

(4) An order may be made under this section even though

the person concerned may be criminally liable in respect of

the matters on the ground of which the order is to be made.

(5) The Registrar of the court shall as soon as practicable

after the making of an order under this section, give notice to

the Registrar that the order has been made and the Registrar—

(a) shall cause to be published in the Gazette the name

of the person against whom the order is made; and

(b) may give such further notice of the making of the

order as he thinks fit.

(6) Every person who acts in contravention of an order

made under this section shall be guilty of an offence and be

liable on conviction to a fine not exceeding one million

rupees or to a term of imprisonment not exceeding five years

or to both such fine and imprisonment.

(7) In this section “company” includes an overseas

company which carries on business in Sri Lanka.

MISCELLANEOUS PROVISIONS RELATING TO DIRECTORS.

Proceedings 215. The articles of a company shall govern the

of board. proceedings of the board of a company.

Remuneration 216. (1) Subject to the provisions of section 217, the

and other board of a company may, if authorised to do so by the articles

benefits.

or by an ordinary resolution, approve—

(a) the payment of any remuneration or the provision

of other benefits by the company to a director for

services as a director or in any other capacity;

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(b) the payment by the company to a director or former

director, of compensation for loss of office;

(c) the entering into of a contract to do any one of the

things referred to in paragraphs (a) or (b),

if the board is satisfied that to do so is fair to the company.

(2) The board shall ensure that forthwith after approving

the making of the payment or the provision of the benefit or

the entering into of the contract, as the case may be, particulars

of the payment or benefit or contract are entered in the interests

register.

(3) The payment of remuneration or the giving of any

other benefit to a director in accordance with a contract

authorised under subsection (1), shall not be required to be

separately authorised under that subsection.

(4) The directors who vote in favour of approving a

payment, benefit, or contact under subsection (1), shall sign

a certificate stating that in their opinion, the making of the

payment or the provision of the benefit or the entering into

of the contract is fair to the company, and the reasons for

reaching that opinion.

(5) Where a payment is made or other benefit provided to

which subsection (1) applies, and either—

(a) the provision of subsections (1) and (4) have not

been complied with ; or

(b) reasonable grounds did not exist for the opinion set

out in the certificate given under subsection (4),

the director or former director to whom the payment is made

or the benefit is provided, shall be personally liable to the

company for the amount of the payment or the monetary

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value of the benefit, except to the extent to which he proves

that the payment or benefit was fair to the company at the

time it was made or provided.

(6) Nothing in this section shall prevent the articles of a

company from providing for the authorisation by shareholders

of payment of remuneration or the giving of other benefits to

directors, and the provisions of subsections (1) to (5) of this

section shall not apply to the payment of remuneration or the

giving of any other benefit approved by shareholders

pursuant to such a provision in the company’s articles.

Restrictions on 217. (1) Subject to the provisions of section 31, and

loans to subsection (2) of this section, a company shall not—

directors.

(a) give a loan to a director of the company or of a

related company; or

(b) enter into any guarantee or provide any security in

connection with a loan made by any person to a

director of the company or of a related company.

(2) The provisions of subsection (1) shall not prevent a

company from—

(a) giving a loan to a director, where the aggregate of

the amounts advanced to the director by the

company does not exceed twenty-five thousand

rupees or such higher sum as may be prescribed by

the Minister from time to time, on the

recommendation of the Advisory Commission

constituted under Part XIX of this Act;

(b) giving a loan to a related company or entering into

a guarantee or providing security in connection with

a loan given by any person to a related company;

(c) providing a director with funds to meet expenditure

incurred or to be incurred by him for the purposes of

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the company or for the purpose of enabling him to

perform his duties as an officer of the company; or

(d) giving a loan in the ordinary course of the business

of lending money, where that business is carried on

by the company.

(3) Where any loan is given in contravention of the

provisions of subsection (1), the loan shall be voidable at the

option of the company and the loan shall be immediately

repayable upon being avoided by the company,

notwithstanding the terms of any agreement relating to the

loan.

(4) Where a transaction other than giving a loan to a

director is entered into by a company in contravention of

subsection (1)—

(a) the director shall be liable to indemnify the company

for any loss or damage resulting from the transaction;

and

(b) the transaction shall be voidable at the option of

the company, unless —

(i) the company has been indemnified under

paragraph (a) for any loss or damage suffered

by it; or

(ii) any rights acquired by a person other than the

director in good faith and for value, without

actual notice of the circumstances giving rise

to the breach of this section, would be affected

by its avoidance.

(5) Where a company fails to comply with the provisions

of subsection (1) —

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding two

hundred thousand rupees; and

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(b) every director of the company who authorises or

permits the company to enter into the relevant

transaction, shall be guilty of an offence and be

liable on conviction to a fine not exceeding one

hundred thousand rupees.

Indemnity and 218. (1) Except as provided for in this section, a

insurance. company shall not indemnify or directly or indirectly effect

insurance for a director or employee of the company or a

related company, in respect of any—

(a) liability for any act or omission in his capacity as a

director or employee; or

(b) costs incurred by that director or employee in

defending or settling any claim or proceeding

relating to any such liability.

(2) A company may if expressly authorised by its articles,

indemnify a director or employee of the company or a related

company, for any costs incurred by him in any proceeding —

(a) that relates to liability for any act or omission in his

capacity as a director or employee; and

(b) in which judgment is given in his favour or in which

he is acquitted or which is discontinued or in which

he is granted relief under section 526.

(3) A company may if expressly authorised by its articles,

indemnify a director or employee of the company or a related

company in respect of—

(a) liability to any person other than the company or a

related company, for any act or omission in his

capacity as a director or employee; or

(b) cost incurred by that director or employee in

defending or settling any claim or proceeding

relating to any such liability,

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not being criminal liability or in the case of a director, liability

in respect of a breach of the duty specified in section 187.

(4) A company may if expressly authorised by its articles

and with the prior approval of the board, effect insurance for

a director or employee of the company or a related company

in respect of—

(a) liability not being criminal liability, for any act or

omission in his capacity as a director or employee;

(b) costs incurred by that director or employee in

defending or settling any claim or proceeding

relating to any such liability; or

(c) costs incurred by that director or employee in

defending any criminal proceedings in which he is

acquitted.

(5) The board of a company shall ensure that particulars

of any indemnity given to or insurance effected for any

director or employee of the company or a related company,

are forthwith entered in the interests register.

(6) An indemnity given in breach of this section shall be

void.

(7) Where insurance is effected for a director or employee

of a company or a related company and the provisions of

either subsection (4) or subsection (5) have not been complied

with, the director or employee shall be personally liable to

the company for the cost of effecting the insurance, except to

the extent that he proves that it was fair to the company at the

time the insurance was effected.

(8) In this section —

“director” includes a former director;

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“effect insurance” includes the payment, whether

directly or indirectly, the costs of the insurance;

“employee” includes a former employee;

“indemnify” includes relieve or excuse from liability,

whether before or after the liability arises and

“indemnity” has a corresponding meaning.

Duty of 219. (1) A director of a company who believes that the

directors on company is unable to pay its debts as they fall due, shall

insolvency.

forthwith call a meeting of the board to consider whether the

board should apply to court for the winding up of the

company and the appointment of a liquidator or an

administrator or carry on further the business of the company.

(2) Where a director referred to in subsection (1) fails to

comply with the requirement of that subsection and at the

time of that failure the company was unable to pay its debts

as they fell due, and the company is subsequently placed in

liquidation, the court may on the application of the liquidator

or of a creditor of the company, make and order that the

director shall be liable for the whole or any part of any loss

suffered by creditors of the company as a result of the company

continuing to carry on its business.

(3) If—

(a) at a meeting called under subsection (1) the board

does not resolve to apply to court for the winding

up of the company and for the appointment of a

liquidator or an administrator;

(b) at the time of that meeting there were no reasonable

grounds for believing that the company was able to

pay its debts as they fell due; and

(c) the company is subsequently placed in liquidation,

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the court may, on the application of the liquidator or of a

creditor of the company, make an order that the directors,

other than those directors who attended the meeting and voted

in favour of applying to court for the winding up of the

company and for the appointment of the liquidator or an

administrator, shall be liable for the whole or any part of any

loss suffered by creditor of the company as a result of the

company continuing to carry on its business.

220. (1) If at any time it appears to a director of a Duty of directors

company that the net assets of the company are less than half on serious loss of

capital.

of its stated capital, the board shall within twenty working

days of that fact becoming known to the director, call an

extraordinary general meeting of shareholders of the company

for the purposes of this section, to be held not later than forty

working days form that date of calling of such meeting.

(2) The notice calling a meeting under this section shall

be accompanied by a report prepared by the board, which

advises shareholders of—

(a) the nature and extent of the losses incurred by the

company;

(b) the cause or causes of the losses incurred by the

company;

(c) the steps, if any, which are being taken by the board

to prevent further such losses or to recoup the losses

incurred.

(3) The business of a meeting called under this section

shall be to discuss the report prepared by the directors and

the financial position of the company. The chairperson of the

meeting shall ensure that shareholders have a reasonable

opportunity to ask questions in relation to and to discuss and

comment on the report and the management of the company

generally.

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(4) Where the board of a company fails to comply with

subsection (1), every director who knowingly and willfully

auothorises or permits the failure or permits the failure to

continue, shall be guilty of an offence and be liable on

conviction to a fine not exceeding two hundred thousand

rupees.

SECRETARIES

Secretary. 221. (1) Every company shall have a secretary.

(2) No person shall be appointed as a secretary of a

company unless such person has, in the prescribed form—

(a) consented to be the secretary of such company; and

(b) certified that such person has such qualifications as

may be prescribed in relation that company, under

section 222.

(3) A person named as the secretary of a company in an

application for incorporation or in an amalgamation proposal,

shall hold office as a secretary from the date of the

incorporation of the company or the date the amalgamation

proposal becomes effective, as the case may be, until that

person ceases to hold office under any provisions of this Act

or any provisions contained in the articles of the company.

(4) Unless the articles of the company otherwise provides,

the board shall have the power to appoint or remove a secretary

of the company.

Qualifications of 222. The secretary of every company having a turnover

secretary to be or stated capital of an amount prescribed under this Act, shall

prescribed.

have such qualifications as may be prescribed, having regard

to the nature of the duties the secretary will be called upon to

discharge.

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REGISTER OF DIRECTORS AND SECRETARIES

223. (1) Every company shall keep at its registered Register of

office or at such other place as may be notified to the Registrar directors and

secretaries.

under section 116, a register of its directors and secretaries

containing with respect to each of them, the following

particulars :—

(a) in the case of an individual, the present name and

surname, any former name or surname, usual

residential address and business occupation;

(b) in the case of a secretary which is a corporation, its

corporate name and registered or principal office.

(2) The company shall ensure that notice in the prescribed

form of—

(a) a change in the directors or the secretary of the

company; or

(b) a change in the particulars contained in the register

in respect of a director or secretary of the company,

is delivered to the Registrar for registration.

(3) A notice under subsection (2) shall—

(a) specify the date of the change;

(b) in the case of the appointment of a new director or

secretary, have annexed to the notice the form of

consent and certificate required under section 203

or subsection (2) of section 211, as the case may be;

and

(c) be delivered to the Registrar within twenty working

days of—

(i) the change occurring, in the case of the

appointment or resignation of a director or

secretary; or

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(ii) the company first becoming aware of the

change, in the case of the death of a director

or secretary or a change in the particulars

contained in the register in respect of a

director or secretary.

(4) Where a company fails to comply with this section—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding one

hundred thousand rupees; and

(b) every officer of the company who is in default shall

be guilty of an offence and be liable on conviction

to a fine not exceeding fifty thousand rupees.

PREVENTION OF OPPRESSION AND MISMANAGEMENT

Oppression. 224. (1) Subject to the provisions of section 226, any

shareholder or shareholders of a company who has a complaint

against the company that the affairs of such company are

being conducted in a manner oppressive to any shareholder

or shareholders (including the shareholder or shareholders

with such complaint) may make an application to court, for

an order under the provisions of this section.

(2) Where on any application made under the provisions

of subsection (1), the court is of the opinion that the affairs of

a company are being conducted in a manner oppressive to

any shareholder or shareholders of the company, the court

may with a view to remedying the matters complained of,

make such order as it thinks fit.

(3) Pending the making by it of a final order, the court may

on the application of a party to the proceedings, make an

interim order which it thinks is necessary for regulating the

conduct of the company’s affairs, upon such terms and

conditions as appear to it to be just and equitable. The

provisions of section 521 shall apply to any interim order

made hereunder.

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225. (1) Subject to the provisions of section 226, any Mis-

management.

shareholder or shareholders of a company, having a

complaint—

(a) that the affairs of the company are being conducted

in a manner prejudicial to the interests of the

company; or

(b) that a material change (not being a change brought

about by or in the interest of any creditors, including

debenture holders or any class of shareholders of

the company) has taken place in the management or

control of the company, whether by an alteration in

its board of directors or of its agent or secretary or in

the constitution or control of the firm or body

corporate acting as its agent or secretary or in the

ownership of the shares of the company or in any

other manner whatsoever, and that by reason of such

change it is likely that the affairs of the company

may be conducted in a manner prejudicial to the

interests of the company,

may make an application to court for an order under the

provisions of this section.

(2) Where, on any application made under the provisions

of subsection (1), the court is of opinion that the affairs of the

company are being conducted as referred to in subsection (1)

or that by reason of any material change that is referred to in

that subsection in the management or control of the company,

it is likely that the affairs of the company will be conducted

as aforesaid, the court may with a view to remedying or

preventing the matters complained of or apprehended, make

such order as it thinks fit.

(3) Pending the making by it of a final order, the court

may on the application of a party to the proceedings make an

interim order which it thinks is necessary, for regulating the

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conduct of the company’s affairs upon such terms and

conditions as appear to it to be just and equitable. The

provisions of section 521 shall apply to any interim order

made hereunder.

Who may make 226. (1) An application under section 224 or section

an application. 225 may only be made by a shareholder or shareholders, who

at any time during the six months prior to the making of the

application—

(a) constituted not less than five per centum of the total

number of shareholders; or

(b) held shares which together carried not less than five

per centum of the voting rights at a general meeting

of the company.

(2) For the purposes of subsection (1), where any shares

are held by two or more persons jointly, such persons shall be

counted only as one shareholder.

(3) Where several shareholders of a company are entitled

to make an application under subsection (1), any one or more

of them having obtained the consent in writing of the

remaining shareholders, may make the application on behalf

and for the benefit of all of them.

(4) Where at the conclusion of an inquiry under the

provisions of section 224 or section 225, the court holds that

the shareholder or shareholders of the company making the

application has or have done so vexatiously or without reason

or probable cause, the court may in addition to any award of

costs against such shareholder or shareholders, direct that

such shareholder or shareholders be disqualified from being

appointed as a director or agent or secretary or manager of

the company for a period not exceeding five years from the

date of the order to be fixed by court, or direct that the

shareholder or shareholders shall not have the right to convene

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or requisition any meeting of the company or have the right

to be present in person or by proxy at any meeting of the

company within the aforesaid period, or to vote upon a show

of hands or at a poll by person or by proxy at such meeting.

227. Notwithstanding the provisions of Part XII, at any Power of court

stage of the winding up proceedings in respect of a company, to act under

section 224 or

where a court is of the opinion that to wind up the company

section 225

would be prejudicial to the interests of a shareholder of the during winding

company, it shall be lawful for the court to act under the up proceedings.

provisions of section 224 or section 225 in like manner, as if

an application had been made to the court under the

provisions of either of those two sections.

228. Without prejudice to the generality of the powers Powers of court

conferred on the court by section 224 or section 225, any on application

order made under either of such sections,may provide for— under section

224 or section

225.

(a) the regulation of the conduct of the company’s

affairs in the future;

(b) the purchase of the shares or interests of any

shareholders of the company by other shareholders

thereof or by the company;

(c) the termination, setting aside or modification of any

agreement, however arrived at, between the company

on the one hand and any of the following persons

on the other, namely—

(i) the managing director;

(ii) any other director;

(iiii) the board of directors;

(iv) the agent or secretary; or

(v) the manager;

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upon such terms and conditions as may, in the opinion

of the court, be just and equitable in all the

circumstances of the case;

(d) the termination, setting aside or modification of any

agreement between the company and any person

not referred to in paragraph (c), upon such terms and

conditions as may, in the opinion of the court, be

just and equitable in all the circumstances of the

case, but always so that no such agreement shall be

terminated, set aside or modified, except after due

notice to the party concerned and after giving such

person an opportunity of being heard;

(e) the setting aside of any transfer, delivery of goods,

payment, execution or other act relating to property

made or done by or against the company within the

three months immediately prior to the date of the

application or the commencement of winding up

proceedings, as the case may be, which would, if

made or done by or against an individual, be deemed

in a case of his insolvency, to be fraudulent

preference; and

(f) any other matter for which in the opinion of the

court it is just and equitable that provision should

be made.

Effect of 229. (1) Where an order under section 224 or section

alteration of 225 makes any alteration in the articles of the company, then,

articles of notwithstanding anything to the contrary contained in any

company by

other provision of this Act, the company shall not have power,

order under

section 224 or except to the extent if any permitted in the order, to make

225. without the leave of the court, any alteration whatsoever in

the articles which is inconsistent with the order.

(2) Subject to the provisions of subsection (1), the

alteration made by the order shall in all respects, have the

same effect as if they had been duly made by the company in

accordance with the provisions of this Act, and the said

provisions shall apply accordingly to the articles so altered.

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(3) A certified copy of every order altering or giving leave

to alter a company’s articles shall, within ten working days

after the making of such order, be filed by the company with

the Registrar who shall register the same.

(4) Where default is made in complying with the

provisions of subsection (3)—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding one

hundred thousand rupees;

(b) every officer of the company who is in default shall

be guilty of an offence and be liable on conviction

to a fine not exceeding fifty thousand rupees.

230. Where the managing director or any other director, Addition of

the agent or secretary or the manager of a company or any respondents to

application

other person who has not been named as a respondent to any

under section

application made under the provisions of section 224 or 224 or section

section 225, applies to be added as a respondent to such 225.

application, the Court shall where at is satisfied that there is

sufficient cause for doing so, direct that he may be added as

a respondent accordingly.

231. (1) Where an order of a court made under section Consequences of

224 or section 225 terminates, sets aside or modifies an termination or

agreement such as is referred to in paragraph (d) or paragraph modification of

certain

(e) of section 228—

agreements.

(a) the order shall not give rise to any claim whatsoever

against the company by any person for damages or

for compensation for loss of office or in any other

respect, either in pursuance of the agreement or

otherwise; and

(b) no managing director or other director, agent,

secretary or manager whose agreement is so

terminated or set aside and no person who, at the

date of the order terminating or setting aside the

agreement was or subsequently becomes an

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associate of such agent or secretary shall, for a period

of five years from the date of the order terminating

the agreement, be appointed or act as the managing

director or other director, agent, secretary or manager

of the company, unless with the leave of the court.

(2) (a) Any person who knowingly acts as a managing

director or other director, agent or secretary or manager of a

company in contravention of the provisions of paragraph (b)

of section (1), shall be guilty of an offence and be liable on

conviction to a fine not exceeding one million rupees.

(b) Where an offence under the provisions of this section

is committed by a body of persons—

(i) if the body of person is a body corporate, every

director and officer of that body corporate; or

(ii) if the body of person is a firm, every partner of the

firm,

shall be deemed to be guilty of such offence:

Provided that no such person shall be deemed to be guilty

of such offence, if he proves that the offence was committed

without his knowledge or that he exercised all due diligence

to prevent the commission of such offence.

Extended 232. A reference in sections 224 to 228 to a “shareholder”,

meaning of shall also include a reference to —

“shareholder”.

(a) a person on whom shares have devolved through

the death of a shareholder;

(b) the executor or administrator of a deceased

shareholder; or

(c) a person who was a shareholder at any time within

six months prior to the making of an application

under section 224 or section 225.

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RESTRAINING ORDERS

233. (1) The court may on an application made under Restraining

this section, make an order restraining a company that, or a orders.

director of a company who, proposes to engage in a conduct

that would contravene the articles of the company or any

provision of this Act, from engaging in that conduct.

(2) An application may be made by —

(a) the company; or

(b) a director or shareholder of the company.

(3) Where the court makes an order under subsection (1),

it may also grant such consequential relief as it thinks fit.

(4) An order may not be made under this section in relation

to a conduct or a course of conduct that has been completed.

(5) The court may at any time before the final

determination of an application under subsection (1), make

as an interim order, any order that it is empowered to make

under that subsection. Such order may at the discretion of the

court, be made ex parte or after notice to the respondent. The

respondent may make an application for an order of revocation

or variation of the exparte order with notice to the petitioner.

(6) The provision of section 521 shall not apply to any

interim order made under this section.

DERIVATIVEACTIONS

234. (1) Subject to the provisions of subsections (3) Derivative

and (4) of this section, the court may, on the application of a actions.

shareholder or director of a company, grant leave to that

shareholder or director to—

(a) bring proceedings in the name and on behalf of the

company or any subsidiary of that company; or

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(b) intervene in proceedings to which the company or

any subsidiary is a party, for the purpose of

continuing, defending, or discontinuing the

proceedings on behalf of the company or subsidiary,

as the case may be.

(2) Without limiting the powers given to a court under

subsection (1), in determining whether to grant or not grant

leave under that subsection, the court shall have regard to—

(a) the likelihood of the proceedings succeeding;

(b) the costs of the proceedings in relation to the relief

likely to be obtained;

(c) any action already taken by the company or

subsidiary to obtain relief;

(d) the interests of the company or subsidiary in the

proceedings being commenced, continued,

defended or discontinued, as the case may be.

(3) Leave to bring proceedings or intervene in

proceedings may be granted under subsection (1), only if the

court is satisfied that either—

(a) the company or subsidiary does not intend to bring,

diligently continue, defend or discontinue the

proceedings, as the case may be; or

(b) it is in the interests of the company or subsidiary,

that the conduct of the proceedings should not be

left to the directors or to the determination of the

shareholders as a whole.

(4) Notice of the application shall be served on the

company or subsidiary as the case may be.

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(5) The company or subsidiary may appear and be heard

and shall inform the court whether or not it intends to bring,

continue, defend, or discontinue the proceedings, as the case

may be.

(6) Except as provided for in this section, a shareholder

or director of a company is not entitled to bring or intervene

in any proceedings in the name of or on behalf of the company

or a subsidiary of the company.

235. The court may on the application of a shareholder Costs of

or a director to whom leave is granted under section 234 to derivative action

bring or intervene in proceedings, order that the whole or to be met by

part of the reasonable costs of bringing or intervening in the company.

proceeding, including any costs relating to any settlement,

compromise or discontinuance approved under section 237,

shall be met by the company.

236. The court may at any time, make any order it thinks Powers of court

fit in relation to any proceedings brought by a shareholder or where leave is

a director or in which a shareholder or director intervenes, as granted.

the case may be, with leave of the court under section 234,

and without limiting the generality of the powers conferred

under this section, may—

(a) make an order authorising the shareholder or any

other person to control the conduct of the

proceedings;

(b) give directions for the conduct of the proceedings;

(c) make an order requiring the company or the directors

to provide information or assistance in relation to

the proceedings; or

(d) make an order directing that any amount ordered to

be paid by a defendant in the proceedings shall be

paid, in whole or in part, to the former and present

shareholders of the company or subsidiary, instead

of to the company or to the subsidiary, as the case

may be.

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Compromise, 237. No proceedings brought by a shareholder or a

settlement or director or in which a shareholder or a director intervenes, as

continuance of

derivative the case may be, with leave of the court under section 234,

action. may be settled or compromised or discontinued without the

approval of the court.

RATIFICATION

Ratification of 238. (1) The purported exercise by a director or the

certain actions of board of directors of a company or of a power vested in the

directors.

shareholders or any other person, may be ratified or approved

by those shareholders or that person, in the same manner in

which the power may be exercised.

(2) The purported exercise of a power that is ratified under

subsection (1) is deemed to be and always to have been, a

proper and valid exercise of that power.

(3) The ratification or approval under this section of the

purported exercise of a power by director or the board of

directors does not prevent the court from exercising a power

which might, apart from the ratification or approval, be

exercised in relation to the action of the director or the board.

PART VIII

AMALGAMATIONS

Amalgamations. 239. Two or more companies may amalgamate and

continue as one company, which may be one of the

amalgamating companies or may be a new company. Public

notice of such amalgamation shall be given in accordance

with the provisions of this Act.

Amalgamation 240. (1) Every company which proposes to amalgamate

proposal. shall approve in accordance with the provisions of section

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241 an amalgamation proposal setting out the terms of the

amalgamation, and in particular —

(a) the name of the amalgamated company, if it is the

same as the name of one of the amalgamating

companies;

(b) the registered office of the amalgamated company;

(c) the full name and residential address of each of the

directors of the amalgamated company;

(d) the full name and address of the secretary of the

amalgamated company;

(e) the share structure of the amalgamated company,

specifying—

(i) the number of shares of the company;

(ii) the rights, privileges, limitations, and

conditions attached to each share of the

company, if different from those set out in

subsection (2) of section 49;

(f) the manner in which the shares of each amalgamating

company are to be converted into shares of the

amalgamated company;

(g) if shares of an amalgamating company are not to be

converted into shares of the amalgamated company,

any consideration that the holders of those shares

are to receive in place of shares of the amalgamated

company;

(h) any payment to be made to a shareholder or director

of an amalgamating company, other than a payment

of the kind described in paragraph (g);

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(i) details of any arrangement necessary to complete

the amalgamation and to provide for the subsequent

management and operation of the amalgamated

company;

(j) the date on which the amalgamation is intended to

become effective.

(2) If the proposed articles of the amalgamated company

are different from the model articles, a copy of the proposed

articles shall be attached to and shall form part of the

amalgamation proposal.

(3) Where shares of one of the amalgamating companies

are held by or on behalf of another of the amalgamating

companies, the amalgamation proposal—

(a) shall provide for the cancellation of those shares

without payment or the provisions of other

consideration when the amalgamation becomes

effective ;

(b) shall not provide for the conversion of those shares

into shares of the amalgamated company.

Approval of 241. (1) Before an amalgamation proposal is put to the

amalgamation shareholders, the board of an amalgamating company shall

proposal. resolve that—

(a) in its opinion the amalgamation is in the best

interests of the company ; and

(b) it is satisfied that the amalgamated company will

immediately after the amalgamation becomes

effective, satisfy the solvency test.

(2) The directors who vote in favour of a resolution

required under subsection (1) shall sign a certificate stating

that in their opinion, the conditions set out in that subsection

are satisfied and setting out the reasons for reaching that

opinion.

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(3) The board of each amalgamating company shall send

to each shareholder of the company, not less than twenty

working days before the amalgamation is proposed to take

effect—

(a) a copy of the amalgamation proposal ;

(b) copies of the certificates given by the directors of

each board ;

(c) a statement setting out the rights of shareholders

under section 93 ;

(d) a statement of any material interests of any director

in the proposal, whether in that capacity or

otherwise;

(e) such further information and explanation as may be

necessary to enble a reasonable shareholder to

understand the nature and implications for the

company and its shareholders of the proposed

amalgamation.

(4) The board of each amalgamating company shall, not

less than twenty working days before the date on which

amalgamation is intended to become effective—

(a) send a copy of the amalgamation proposal to every

secured creditor of the company ; and

(b) give public notice of the proposed amalgamation,

including a statement to the effect that—

(i) copies of the amalgamation proposal are

available for inspection by any shareholder

or creditor of an amalgamating company, or

any person to whom an amalgamating

company is under an obligation, at the

registered offices of the amalgamating

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companies and at such other places as may

be specified, during normal business hours ;

and

(ii) a shareholder or creditor of an amalgamating

company or any person to whom an

amalgamating company is under an

obligation, is entitled to be supplied free of

charge with a copy of the amalgamation

proposal upon request made to an

amalgamating company.

(5) An amalgamation may be effected if the amalgamation

proposal is approved—

(a) by a special resolution of the shareholders of each

amalgamating company, in accordance with the

provisions of section 92 ; and

(b) if a provision in the amalgamation proposal would,

if contained in an amendment to an amalgamating

company’s articles or otherwise proposed in relation

to that company, require the approval of an interest

group, by a special resolution of that interest group.

(6) For the purposes of this section, the solvency test shall

be applied without taking into account the stated capital of

the amalgamated company.

(7) A director who fails to comply with the requirements

of subsection (2) shall be guilty of an offence and be liable

on conviction to a fine not exceeding two hundred thousand

rupees.

(8) If the court is satisfied that giving effect to an

amalgamation proposal would unfairly prejudice a creditor

of an amalgamating company or a person to whom an

amalgamating company is under an obligation, it may on

application made in that behalf by that person made at any

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time before the date on which the amalgamation becomes

affective, make any order as it thinks fit in relation to the

proposal, and may without limiting the generality of this

subsection, make an order—

(a) directing that effect shall not be given to the

proposal ;

(b) directing the company or its board to reconsider the

proposal or any part of it.

(9) An order under subsection (8) may be made on such

terms and conditions as the court thinks fit.

242. (1) A company and one or more other companies Short form

that are directly or indirectly wholly owned by it, may amalgamation.

amalgamate and continue as one company (being the

company first referred to) without complying with the

provisions of section 240 and section 241, if—

(a) the amalgamation is approved by a resolution of

the board of each amalgamating company ; and

(b) each resolution provides that—

(i) the shares of each amalgamating company,

other than the amalgamated company, will

be cancelled without payment or other

consideration ;

(ii) the articles of the amalgamated company will

be the same as the articles of the company

first referred to ;

(iii) the board is satified that the amalgamated

company will immediately after the

amalgamation becomes effective, satisfy the

solvency test ; and

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(iv) the person or persons named in the resolution

will be the director or directors of the new

company.

(2) Two or more companies each of which is directly or

indirectly wholly owned by the same company, may

amalgamate and continue as one company without complying

with the provisions of section 240 or section 241 if—

(a) the amalgamation is approved by a resolution of

the board of each amalgamating company ;

(b) each resolution provides that—

(i) the shares of all but one of the amalgamating

companies will be cancelled without

payment or other consideration ;

(ii) the articles of the amalgamated company will

be the same as the articles of the

amalgamating company whose shares are not

cancelled ;

(iii) the board is satisfied that the amalgamated

company will immediately after the

amalgamation becomes affective, satisfy the

solvency test ; and

(iv) the person or persons named in the resolution

will be the director or directors of the new

company.

(3) The board of each amalgamating company shall, not

less than twenty working days before the date on which the

amalgamation is intended to become effective—

(a) give written notice of the proposed amalgamation

to every secured creditors of the company ; and

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(b) give public notice of the proposed amalgamation.

(4) The resolutions approving an amalgamation under

this section shall, taken together, be deemed to constitute an

amalgamation proposal that has been approved.

(5) The directors who vote in favour of a resolution

required under subsection (1) or subsection (2), as the case

may be, shall sign a cerificate stating that in their opinion,

the conditions set out in subsection (1) or subsection (2) are

satisfied, and setting out the reasons for reaching that opinion.

(6) For the purposes of this section, the solvency test shall

be applied without taking into account the stated capital of

the amalgamated company.

(7) A director who fails to comply with subsection (5)

shall be guilty of an offence and be liable on conviction to a

fine not exceeding two hundred thousand rupees.

243. For the purpose of effecting an amalgamation, the Registration of

following documents shall be delivered to the Registrar for amalgamation

proposal.

registration :—

(a) the approved amalgamation proposal ;

(b) any certificates required under subsection (2) of

section 241 or subsection (5) of section 242 ;

(c) a certificate signed by the board of each

amalgamating company stating that the

amalgamation has been approved in accordance with

the provisions of this Act and the articles of the

company ;

(d) a consent from each of the persons named in the

amalgamation proposal as a director of the

amalgamated company, to act as a director of that

company, as required by section 203 ; and

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(e) a consent from each of the persons named in the

amalgamation proposal as secretary of the

amalgamated company, to act as secretary of that

company, as required by subsection (2) section 221.

Certificate of 244. (1) The Registrar shall forthwith after receipt of

amalgamation. the documents required under section 243—

(a) if the amalgamated company is the same as one of

the amalgamating companies, issue a certificate of

amalgamation in the prescribed form ; or

(b) if the amalgamated company is a new company—

(i) enter particulars of the company on the

Register ; and

(ii) issue a certificate of amalgamation in the

prescribed form together with a certificate of

incorporation in the prescribed form.

(2) If an amalgamation proposal specifies a date on which

the amalgamation is intended to become effective, and that

date is the same as or later than the date on which the Registrar

receives the documents, the certificate of amalgamation, and

any certificate of incorporation shall be deemed to have affect

on the date specified in the amalgamation proposal.

(3) Notice of completion of such amalgamation shall be

given to the public by the company.

Effect of 245 On the date shown in a certificate of amalgamation—

certificate of

amalgamation.

(a) the amalgamation becomes effective ;

(b) if it has the same name as of one of the amalgamating

companies, the amalgamated company shall have

the name specified in the amalgamation proposal ;

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(c) the Registrar shall remove all particulars relating to

the amalgamating companies, other than the

amalgamated company, from the Register ;

(d) the amalgamated company succeeds to all the

property, rights, powers, and privileges of each of

the amalgamating companies ;

(e) the amalgamated company succeeds to all the

liabilities and obligations of each of the

amalgamating companies ;

(f) proceedings pending by or against an amagamating

company may be continued by or against the

amalgamated company ;

(g) a conviction, ruling, order, or judgment in favour of

or against an amalgamating company, may be

enforced by or against the amalgamated company ;

(h) the stated capital of the amalgamated company shall

be the sum certified by the auditor of the

amalgamated company ; and

(i) any provisions of the amalgamation proposal that

provide for the conversion of shares or rights of

shareholders in the amalgamating companies, shall

have effect according to their tenor.

246. (1) Where any person pursuant to an offer made to Power to acquire

the holders of voting rights of a company acquires not less shares of

shareholders

than ninety per centum of the voting rights of such company, dissenting from

such person may within three months of such acquisition scheme or

give notice in the prescribed manner to all the shareholders contract

approved by

holding the outstanding shares carrying voting rights, the

majority.

desire to acquire such shares, and unless the court thinks fit

to order otherwise, upon an application made by any

shareholder to the court within fourteen days of the receipt of

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such notice for the acquisition of his shares, shall be entitled

to acquire such shares on terms not less favourable than the

terms made under the aforementioned offer.

(2) A copy of the notice in relation to the acquisition

referred to in subsection (1) shall be forwarded to the company,

the shares of which are to be so acquired.

(3) Where any person has given notice under the

provisions of subsection (1), on the expiration of one month

from the date on which such notice was given, such person

shall forward the due consideration to the company, the shares

of whcih are to be so acquired and the company secretary of

such company shall register such acquirer as the holder of all

such shares.

(4) Any consideration received by the company shall be

held by the company on trust for the person or persons entitled

to the shares in respect of which the sum or other consideration

was received. The company secretary of such company shall

forward such consideration due, to all shareholders without

any undue delay.

(5) Where after reasonable inquiry is made at such

intervals and the publication of notices in all three languages

in daily newspapers, the person entitled to any consideration

cannot be found and six years have elapsed since the

consideration has been received or the company is wound

up, the consideration together with any interest, dividend or

other benefit that has accrued from it, shall be paid by the

company to the Public Trustee.

(6) In the case where the company is wound up—

(a) the trust shall terminate ;

(b) the company or, as the case may be, the

liquidator shall sell the consideration other

than cash and any benefit other than cash

that has accrued from the consideration ; and

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(c) a sum representing ;

(i) the consideration so far as it is cash,

(ii) the proceeds of any sale under sub-

paragraph (b) above; and

(iii) any interest, dividend or other benefit

that has accrued from the consideration,

shall be deposited in the name of the Public Trustee.

(7) The expenses of any such inquiry and press notices as

is mentioned above shall be defrayed out of the money or

other property held in trust referred to in subsection (4) above.

PART IX

COMPROMISES WITH CREDITORS

247. In this Part of this Act, unless the context otherwise Interpretation.

requires—

“compromise” means a compromise between a

company and its creditors, including a

compromise—

(a) cancelling all or part of any debt of the

company ;

(b) varying the rights of its creditors or the terms

of a debt ;

(c) relating to an alteration of a company’s articles

that affects the likelihood of the company’s

ability to pay a debt;

“creditor” includes a person who in a liquidation,

would be entitled to claim in accordance with the

provisions of section 357, that a debt is owing to

that person by the company ; and

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“proponent” means a person referred to in section 248

who proposed a compromise in accordance with

the provisions of this Part of this Act.

Compromise 248. (1) Any of the following persons may propose a

proposal. compromise under this Part, if that person has reason to believe

that a company is or is likely to become unable to pay its

debts as they fall due:—

(a) the board of the company ;

(b) a receiver appointed in relation to the property and

undertakings of the company ;

(c) an administrator of the company appointed under

Part XIII ;

(d) a liquidator of the company ; or

(e) with the leave of the court, any creditor or shareholder

of the company.

(2) Where the court grants leave to a creditor or shareholder

under paragraph (d) of subsection (1), the court may make an

order directing the company to supply to the creditor or

shareholder within such time as may be specified, a list of the

names and addresses of the company’s creditors, showing the

amounts owed to each of them or such other information as

may be specified, to enable the creditor or shareholder to

propose a compromise.

Notice of 249. (1) The proponent shall compile, in relation to each

proposed class of creditors of the company, a list of creditors known to

compromise.

the proponent who would be affected by the proposed

compromise, and setting out—

(a) the amount owing or estimated to be owing to each

of them ; and

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(b) the number of votes which each of them is entitled

to cast on a resolution approving the compromise.

(2) The proponent shall give to each known creditor, the

company, any receiver or administrator or liquidator

respectively, and deliver to the Registrar—

(a) a notice in accordance with the requirements

specified in the Seventh Schedule hereto, of the

intention to hold a meeting of creditors, or any two

or more classes of creditors, for the purpose of voting

on the resolution ; and

(b) a statement—

(i) containing the name and address of the

proponent and the capacity in which the

proponent is acting ;

(ii) containing the address and telephone number

to which inquiries may be directed during

normal business hours ;

(iii) setting out the terms of the proposed

compromise and the reasons for it ;

(iv) setting out the reasonably foreseeable

consequences for creditors of the company

of the compromise being approved ;

(v) setting out the extent of any interest of a

director in the proposed compromise ;

(vi) explaining that the proposed compromise and

any amendment to it proposed at a meeting

of creditors or any classes of creditors, will

be binding on all creditors or on all creditors

of that class, if approved in accordance with

the provisions of section 250 ; and

204 Companies Act, No. 07 of 2007

(vii) containing detalis of any procedure proposed

as part of the proposed compromise for

varying the compromise following its

approval ; and

(c) a copy of the list or lists of creditors referred to in

subsection (1).

Effect of 250. (1) A compromise including any amendment

compromise. proposed at the meeting, is deemed to be approved by

creditors or a class of creditors, if at a meeting of creditors or

that class of creditors conducted in accordance with the

requirements specified in the Seventh Schedule hereto, the

compromise, including any amendment is adopted in

accordance with paragraph 5 of that Schedule.

(2) A compromise including any amendment approved

by creditors or a class of creditors of a company in accordance

with the provisions of this Part, is binding on the company

and on—

(a) all creditors ; or

(b) if there is more than one class of creditors, on all

creditors of that class,

to whom notice of the proposal was given under section 249.

(3) Where a resolution proposing a compromise including

any amendment is put to the vote of more than one class of

creditors, it shall be presumed unless the contrary is expressly

stated in the resolution, that the approval of the compromise,

including any amendment by each class, is conditional on

the approval of the compromise, including any amendment

by every other class voting on the resolution.

(4) The proponent shall give written notice of the result of

the voting to each known creditor, the company, any receiver

or administrator or liquidator and the Registrar, respectively.

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251. (1) A compromise approved under section 250 Variation of

may be varied either— compromise

(a) in accordance with any procedure for variation

incorporated in the compromise as approved; or

(b) by the approval of a variation of the compromise in

accordance with the requirements provided for in

this Part which, for that purpose, shall apply with

such modifications as may be necessary, as if any

proposed variation were a proposed compromise.

(2) The provisions of this Part shall apply to any

compromise that is varied in accordance with this section.

252. (1) On the application of the proponent or the Powers of court.

company, the court may—

(a) give directions in relation to a procedural

requirement imposed under provisions of this Part

or waive or vary any such requirement, if the court

is satisfied that it would be just to do so; or

(b) order that during a period specified in the order,

beginning not earlier than the date on which notice

was given of the proposed compromise and ending

not later than ten working days after the date on

which notice was given of the result of the voting

on it—

(i) proceedings in relation to a debt owning by

the company be stayed; or

(ii) a creditor should refrain from taking any other

measure to enforce payment of a debt owing

by the company.

(2) Nothing in paragraph (b) of subsection (1) shall affect

the right of a secured creditor during that period to seize,

realise, appoint a receiver in respect of or otherwise deal with

property of the company, over which that creditor has a

charge.

206 Companies Act, No. 07 of 2007

(3) Where the court is satisfied on the application of a

creditor of a company who was entitled to vote on a

compromise, that —

(a) insufficient notice of the meeting or of the matters

required to be notified under section 249 was given

to that creditor;

(b) there was some other material irregularity in

obtaining approval of the compromise; or

(c) in the case of a creditor who voted against the

compromise, the compromise is unfairly prejudicial

to that creditor or to the class of creditors to which

that creditor belongs,

the court may make an order that such creditor is not bound

by the compromise, or make such other order as it thinks fit.

(4) An application under subsection (3) shall be made

not later than ten working days after the date on which notice

of the result of the voting was given to the creditor.

Effect of 253. (1) Where a compromise is approved under section

compromise in 250, the court may on the application of—

liquidation of a

company.

(a) the company ;

(b) a receiver appointed in relation to property of the

company;

(c) an administrator; or

(d) with the leave of the court, any creditor or shareholder

of the company,

make such order as the court thinks fit with respect to the

extent, if any, to which the compromise will, if the company

is put into liquidation, continue in effect and be binding on

the liquidator of the company.

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(2) Where a compromise is approved under section 250

and the company is subsequently put into liquidation, the

court may on the application of—

(a) the liquidator;

(b) a receiver appointed in relation to property of the

company; or

(c) with the leave of the court, any creditor or shareholder

of the company,

make such order as the court thinks fit with respect to the

extent, if any, to which the compromise will continue in effect

and be binding on the liquidator of the company.

254. Unless the court orders otherwise, the costs incurred Costs of

in organising and conducting a meeting of creditors for the compromise.

purpose of voting on a proposed compromise—

(a) shall be met by the company;

(b) if incurred by a receiver or a liquidator, shall be

deemed to be a cost of the receivership or

liquidation;

(c) if incurred by an administrator, shall be deemed to

be a cost of the administration; or

(d) if incurred by any other person, shall be deemed to

be a debt due to that person from the company and,

if the company is put into liquidation, are payable

in the order of priority specified in the Ninth

Schedule.

208 Companies Act, No. 07 of 2007

PART X

APPROVAL OFARRANGEMENTS, AMALGAMATIONS, AND

COMPROMISES BY COURT

Interpretation. 255. In this Part of this Act, unless the context otherwise

requires—

“arrangement” includes a re-organisation, of the shares

and the stated capital of a company;

“company” includes a registered overseas company;

or of the shares or the stated capital of the

company; and

“creditor” includes a person who in a liquidation, would

be entitled to claim in accordance with the

provision of section 357 that a debt is owing to

that person by the company.

Court approval 256. (1) Notwithstanding the provisions of this Act or

of arrangements, the provisions contained in the articles of a company, the

amalgamation

court may on the application of —

and

compromises.

(a) a company;

(b) an administrator appointed under Part XIII; or

(c) with the leave of the court, any shareholder or creditor

of a company,

order that an arrangement or amalgamation or compromise

shall be binding on the company and on such other persons

or classes of persons as the court may specify. Any such order

may be made on such terms and conditions as the court thinks

fit.

(2) Before making an order under subsection (1), the court

may, on the application of the company or the administrator

Companies Act, No. 07 of 2007 209

or any shareholder or creditor or other person who appears to

the court to be interested or of its own motion, make any one

or more of the following orders :—

(a) an order that notice of the application together with

such information relating to it as the court thinks

fit, be given in such form and in such manner and to

such persons or classes of persons as the court may

specify;

(b) an order directing the holding of a meeting or

meetings of shareholders or any class of shareholders

or creditors or any class of creditors of a company,

to consider and if determined fit, to approve in such

manner as the court may specify, the proposed

arrangement or amalgamation or compromise. The

court may for that purpose determine the

shareholders or creditors that constitute a class of

shareholders or creditors of a company;

(c) an order requiring that report on the proposed

arrangement or amalgamation or compromise be

prepared for the court by a person specified by the

court, and if the court thinks fit, be supplied to the

shareholders or any class of shareholders or creditors

or any class of creditors of a company or to any

other person who appears to the court to be

interested;

(d) an order as to the payment of the costs incurred in

the preparation of any such report;

(e) an order specifying the persons who shall be entitled

to appear and be heard on the application to approve

the arrangement or amalgamation or compromise.

(3) An order made under this section shall have effect on

and from the date specified in the order.

210 Companies Act, No. 07 of 2007

(4) Within ten working days of an order being made by

the court under this section, the company shall ensure that a

copy of the order is delivered to the Registrar.

(5) Where a company fails to comply with the

requirements of subsection (4)—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding one

hundred thousand rupees; and

(b) every officer of the company who is in default shall

be guilty of an offence and liable on conviction to a

fine not exceeding fifty thousand rupees.

Court may make 257. (1) Without limiting the powers conferred under

additional section 256, the court may for the purpose of giving effect to

orders.

any arrangement or amalgamation or compromise approved

under that section, either by the order approving the

arrangement or amalgamation or compromise or by any

subsequent order, provide for and prescribe terms and

conditions relating to —

(a) the transfer or vesting of movable or immovable

property, assets, rights, powers, interests, liabilities,

contracts and engagements;

(b) the issue of shares, securities or policies of any kind;

(c) the continuation of legal proceedings;

(d) the liquidation or the removal from the Register

without liquidation, name and particulars of any

company;

(e) the provision to be made for persons who voted

against the arrangement or amalgamation or

compromise at any meeting called in accordance

with an order made under paragraph (b) of subsection

(2) of section 256, or who appeared before the court

Companies Act, No. 07 of 2007 211

in opposition to the application, to approve the

arrangement or amalgamation or compromise;

(f) such other matters as are necessary or desirable to

give effect to the arrangement or amalgamation or

compromise.

(2) An order made by the court under subsection (1) shall

have effect according to its tenor.

(3) Within ten working days of an order being made by

the court under this section, the company shall ensure that a

copy of the order is delivered to the Registrar.

(4) Where a company fails to comply with the

requirements of subsection (3)—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding one

hundred thousand rupees; and

(b) every officer of the company who is in default shall

be guilty of an offence and be liable on conviction

to a fine not exceeding fifty thousand rupees.

258. The court shall not approve an arrangement or Application of

amalgamation or compromise under section 256 if it could Part VIII.

be effected under Part VIII or this Part or under any other

provisions of this Act, unless it is satisfied that it is not

reasonably practicable to do so.

259. The provisions of section 253 shall apply with such Application of

modifications as may be necessary, in relation to any section 253 to

compromise approved under section 256. compromise

approved under

this Part.

212 Companies Act, No. 07 of 2007

PART XI

PROVISIONS RELATING TO OFFSHORE COMPANIES

Interpretation. 260. In this Part of this Act, “company” includes a

company or a body corporate incorporated under the laws of

any foreign country.

Company 261. (1) Any company may make an application to the

incorporated for Registrar in accordance with the provisions of this Part of

business outside this Act to be registered in Sri Lanka as an off-shore company

Sri Lanka.

and to be so referred to, and in the case of a company

incorporated abroad, to be deemed to be incorporated in

Sri Lanka, as if it had been incorporated under the provisions

of this Act.

(2) An application for registration under subsection (1)

shall have annexed thereto the following documents :—

(a) a certified copy of the charter, statute or

memorandum and articles of association of the

company or other instrument constituting or

defining the constitution of the company, and where

such instrument is not in an official language or in

English, a translation of the instrument in such

language as may be specified by the Registrar;

(b) a list of the directors or those managing the affairs of

the company, containing their full names, addresses,

occupations and the offices they hold in the

company;

(c) the names and addresses of one or more persons who

are resident in and are citizens of Sri Lanka, who is

or are authorised to represent the company;

(d) a statement containing the full address of—

(i) the registered or principal office of the

company in the country of incorporation; and

(ii) the office of the company in Sri Lanka;

Companies Act, No. 07 of 2007 213

(e) a certified copy (certified of recent date of the

incorporation of the company).

(3) The company shall notify the Registrar of any

amendments or alterations in respect of any of the aforesaid

particulars within the prescribed time, and in the prescribed

form.

262. (1) Subject to the provisions of subsections (3) Grant of

and (4), the Registrar may, having regard to the national certificate of

registration to

interest or in the interest of the national economy, issue a off-shore

certificate of registration to an off-shore company for the company.

carrying on of its business outside Sri Lanka, where that off-

shore company—

(a) makes payment of the prescribed fee; and

(b) produces to the Registrar a certificate from a bank,

that the prescribed sum to defray the expenses of

the off-shore company for the purposes of its office

in Sri Lanka, has been deposited to the credit of an

account at that bank in the name of the off-shore

company.

(2) A certificate of registration issued to an off-shore

company under this Part of this Act, shall exempt the

company from complying with any other provision of this

Act.

(3) No certificate of registration shall be granted to a

company under this section, where —

(a) the winding up or liquidation of such company has

commenced;

(b) a receiver of the property of such company has been

appointed;

(c) there is any scheme or order in force in relation to

such company under which the rights of creditors

are suspended or restricted.

214 Companies Act, No. 07 of 2007

(4) Before the Registrar issues a certificate of registration

to an off-shore company under this section, he shall satisfy

himself that—

(a) in the case of a company incorporated abroad, there

is no legal impediment in the country of

incorporation to the company engaging in the

business of an off-shore company;

(b) the issue of such certificate does not render defective

any legal or other proceedings instituted or to be

instituted by or against the company,

and shall embody in the certificate such conditions as he

may deem necessary in the national interest or in the interest

of the national economy.

(5) The Registrar may for good cause cancel the

registration of an off-shore company under this Part of this

Act. Upon such cancellation, the off-shore company shall

cease to enjoy the privileges and benefits granted under this

Part of this Act or under any other written law relating to off-

shore companies.

Continuation of 263. An off-shore company which intends to continue its

business of off- business as an off-shore company under this Act shall in every

shore company.

calendar year—

(a) produce to the Registrar proof of payment of the

prescribed fee in the prescribed manner at the

commencement of that year and not later than the

thirty first day of January of that year ; and

(b) produce to the Registrar not later than the thirty-

first day of January of that year, or such later date as

the Registrar may approve, a bank certificate as

required under paragraph (b) of subsection (1) of

section 262 in regard to defraying of the expenses

of the off-shore company for that year.

Companies Act, No. 07 of 2007 215

264. (1) An off-shore company shall have power to carry Prohibition on

carrying on

on any business outside Sri Lanka; but shall not be entitled

business in Sri

to carry on any business within Sri Lanka. Lanka.

(2) Nothing in subsection (1) shall preclude an off-shore

company securing in Sri Lanka any benefits or advantages

available under any written law which may be applicable to

it.

265. An off-shore company may cease carrying on Cessation of

business as an off-shore company by giving notice to the business as an

Registrar in the prescribed form of its intention to do so. off-shore

company.

PART XII

WINDING UP

(1) PRELIMINARY

Modes of winding up

266. In this Part of this Act, the expression “contributory” Definition of

means every shareholder of the company and every other contributory.

person liable to contribute to the assets of a company in the

event of its being wound up, and for the purposes of all

proceedings for determining and all proceedings prior to the

final determination of, the persons who are to be deemed

contributories and includes any person alleged to be a

contributory.

267. (1) The winding up of a company may be either — Modes of

winding up.

(a) by the court;

(b) voluntary; or

(c) subject to the supervision of the court.

(2) The provisions of this Act with respect to winding up

shall apply unless the contrary appears, to the winding up of

a company in any manner set out in subsection (1).

216 Companies Act, No. 07 of 2007

CONTRIBUTORIES

Power of 268. (1) The liquidator may—

liquidator to

enforce liability

(a) if a shareholder is liable to calls, make calls on the

of share holders

and former shares held by that shareholder;

shareholders.

(b) if a shareholder or former shareholder is otherwise

liable to the company, enforce that liability.

(2) A call under paragraph (a) of subsection (1) shall be

make in writing.

Liability of 269. (1) Subject to the provisions of subsection (2), if a

former shareholder of a company in liquidation fails to pay any

shareholders for amount due in respect of a share, that amount shall be payable

unpaid calls.

by and may be recovered by the liquidator from any other

person who was registered as the holder of the share at any

time, within—

(a) the period of one year before the commencement of

the liquidation; or

(b) in the case of a company that was put into

liquidation by the court, the period of one year

before the making of the application to the court

together with the period commencing on the date of

the making of that application and ending on the

date on which the order of the court was made.

(2) A former shareholder shall not be liable under

subsection (1), if at all times that he was registered as the

holder of the share during the period referred to in subsection

(1), the company was able to pay its debts as they fell due.

(3) Where the liability attached to a share has increased

after the time at which the former shareholder was registered

as the holder of the share, he shall be liable only for the

amount of any liability attached to the share at the time at

which it was held by him.

Companies Act, No. 07 of 2007 217

(II) WINDING UP BY THE COURT

CASES IN WHICH COMPANY MAY BE WOUND UP BY THE COURT

270. A company may be wound up by the court, if— Circumstance in

which a

(a) the company has by special resolution resolved that company may be

wound up by the

the company be wound up by the court; court.

(b) the company does not commence its business within

a year from its incorporation or suspends it business

for one year;

(c) if the number of the members falls below the

minimum number required under subsection (2) of

section 4 of this Act;

(d) the company has no directors;

(e) the company is unable to pay its debts; or

(f) the court is of opinion that it is just and equitable

that the company should be wound up.

271. A company shall be deemed to be unable to pay its Definition of

debts where— inability to pay

debts.

(a) a creditor by assignment or otherwise, to whom the

company is indebted in a sum exceeding fifty

thousand rupees then due, has served on the

company by leaving it at the registered office of the

company, a demand under his hand requiring the

company to pay the sum so due and the company

has for three weeks from the date of so leaving,

neglected to pay the sum or to secure or compound

for it to the reasonable satisfaction of the creditor;

(b) execution or other process issued on a judgment,

decree or order of any court in favour of a creditor of

the company, is returned unsatisfied in whole or in

part; or

218 Companies Act, No. 07 of 2007

(c) it is proved to the satisfaction of the court that the

company is unable to pay its debts, and in

determining whether a company is unable to pay its

debts, the court shall take into account the

contingent and prospective liabilities of the

company.

PETITION FOR WINDING UP AND EFFECTS THEREOF

Application for 272. (1) An application to the court for the winding up

winding up. of a company shall be by petition presented subject to the

provisions of this section, either by the company or by any

creditor or creditors (including any contingent or prospective

creditor or creditors), contributory or contributories, or by all

or any of those parties, jointly or separately:

Provided that—

(a) a contributory shall not be entitled to present a

winding-up petition unless—

(i) the number of members falls below the

minimum number required under subsection

(2) of section 4 of this Act ; or

(ii) the shares in respect of which he is a

contributory or some of them, either were

originally allotted to him or have been held

by him and registered in his name, for at least

six months during the eighteen months

immediately preceding the date of

commencement of the winding up or have

devolved on him through the death of a

former holder ;

(b) the court shall not give a hearing to a winding-up

petition presented by a contingent or prospective

creditor until such security for costs has been given

as the court thinks reasonable, and until a prima

facie case for winding up has been established to

the satisfaction of the court ; and

Companies Act, No. 07 of 2007 219

(c) the Registrar may present a winding-up petition in

the case of a company referred to in subsection (3)

of section 177.

(2) Where a company is being wound up voluntarily or

subject to supervision, a winding-up petition may be

presented by the official receiver attached to the court as

well as by any other person authorised in that behalf under

the provisions of this section, but the court shall not make a

winding up order on the petition, unless it is satisfied that the

voluntary winding up or winding up subject to supervision

cannot be continued with due regard to the interests of the

creditors or contributories.

273. (1) On hearing a winding-up prtition, the court Powers of court

may dismiss it or adjourn the hearing conditionally or on hearing

petition.

unconditionally or make any interim order or any other order

that it thinks fit, but the court shall not refuse to make a

winding up order on the ground that the assets of the company

have been mortgaged to an amount equal to or in excess of

those assets, or that the company has no assets.

(2) Where a winding-up petition is presented by

shareholders of the company as contributories on the ground

that it is just and equitable that the company should be wound

up, the court shall where it is of opinion that—

(a) the petitioners are entitled to relief either by

winding-up the company or by some other means ;

and

(b) in the absence of any other remedy it would be just

and equitable that the company should be wound

up,

make a winding-up order, unless it is of the opinion that

some other remedy is available to the petitioners and that

they are acting unreasonably in seeking to have the company

wound up instead of pursuing that other remedy.

220 Companies Act, No. 07 of 2007

Power to stay or 274. At any time after the presentation of a winding-up

restrain petition, and before a winding-up order has been made, the

proceedings

company or any creditor or contributory may-

against a

company.

(a) where any action or proceeding against the company

is pending in any court in Sri Lanka, make an

application to the court in which such action or

proceeding is pending for a stay of proceedings

therein ; and

(b) where any other action or proceeding is pending

against the company, make an application to the

court having jurisdiction to wind up the company,

to restrain further peoceedings in such action or

proceeding, and the court to which application is so

made may, as the case may be, stay or restrain the

proceedings accordingly on such terms as it thinks

fit.

Avoidance of 275. In a winding up by the court, any disposition of the

disposition of property of the company, including things in action and any

property &c.

after transfer of shares or alteration in the status of the members of

commencement the company made after the commencement of the winding

of winding-up. up, shall unless the court otherwise orders, be void.

Avoidance of 276. (1) Where any company is being wound up by the

attachments &c. court, subject to the provisions of subsection (2) any

attachment, sequestration, or execution put in force against

the estate or effects of the company after the time of the

presentation of the petition for the winding up, shall be void

to all intents.

(2) Nothing in this section shall apply to an execution

process or attachment against any property by or for the

benefit of a creditor, who is entitled to a charge in respect of

that property.

Companies Act, No. 07 of 2007 221

COMMENCEMENT OF WINDING UP

277. (1) Where before the presentation of a petition for Commencement

the winding up of a company by the court, a resolution has of winding up

by the court.

been passed by the company for voluntary winding up, the

winding up of the company shall be deemed to have

commenced at the time of the passing of the resolution and

unless the court, on proof of fraud or mistake thinks fit

otherwise to direct, all proceedings taken in the voluntary

winding up shall be deemed to have been validly taken.

(2) In any other case, the winding up of a company by the

court shall be deemed to commence at the time of the

presentation of the petition for the winding up.

CONSEQUENCES OF WINDING UP ORDER

278. On the making of a winding up order, a copy of the Copy of order to

order shall forthwith be forwarded by the company or be forwarded to

Registrar.

otherwise as may be prescribed, to the Registrar who shall

make a minute thereof in his books relating to the company.

279. (1) When a winding up order has been made or a Actions stayed

provisional liquidator has been appointed, subject to the on winding up.

provisions of subsection (2), no action or proceeding shall

be proceeded with or commenced against the company except

by leave of the court, and subject to such terms as the court

may impose.

(2) Nothing in this section shall apply to an execution

process or attachment against any property by or for the

benefit of a creditor, who is entitled to a charge in respect of

that property.

280. An order for winding up a company shall operate Effect of

in favour of all the creditors and of all the contributories of winding up

order.

the company, as if made on the joint petition of a creditor and

of a contributory.

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OFFICIAL RECEIVER IN WINDING UP

Official 281. For the purposes of this Act, the expression “official

receiver. receiver” so far as it relates to the winding up of a company

by the court, means the official receiver if any, attached to

the court for insolvency purposes, or if there is no such official

receiver so attached, such person as the Minister may appoint

as official receiver to that court.

Appointment 282. If in the case of the winding up of any company by

of official court it appears to the court desirable with a view to securing

receiver by

a more convenient and economical conduct of such winding

court in

certain cases. up, that some officer, other than the person who would by

virtue of the provisions of section 281 be the official receiver

should be the official receiver for the purposes of that winding

up, the court may appoint that other officer to act as official

receiver in that winding up, and the person so appointed

shall be deemed to be the official receiver in that winding up

for all purposes of this Act.

Statement of 283. (1) Where the court has made a winding up order

company’s or appointed a provisional liquidator, there shall, unless the

affairs to be court thinks fit to order otherwise and so orders, be made out

submitted to

and submitted to the official receiver a statement in the

official

receiver. prescribed form of the affairs of the company, verified by

affidavit and showing the particulars of its assets, debts and

liabilities, the names, residences and occupations of its

creditors, the securities held by them respectively, the dates

when the securites were respectively given and such further

or other information as may be prescribed or as the official

receiver may require.

(2) The statement referred to in subsection (1) shall be

submitted and verified by one or more of the persons who are

at the relevant date the directors and by the person who is at

that date the secretary of the company or by such of the

persons referred to below, who may be appointed by court as

the official receiver, subject to the direction of the court —

(a) who are or have been officers of the company ;

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(b) who have taken part in the formation of the company

at any time within one year before the relevant date;

(c) who are in the employment of the company or have

been in the employment of the company within the

said year and are in the opinion of the official

receiver, capable of giving the information required;

(d) who are or have been within the said year officers of

or in the employment of a company which is or

within the said year was, an officer of the company

to which the statement relates.

(3) The statement referred to in subsection (1) shall be

submitted within fourteen days from the relevant date, or

within such extended time as the official receiver or the court

may, for special reasons appoint.

(4) Any person making or concurring in making the

statement and affidavit required by the provisions of this

section, shall be allowed and shall be paid by the official

receiver or provisional liquidator, as the case may be, out of

assets of the company, such costs and expenses incurred in

and about the preparation and making of the statement and

affidavit as the official receiver may consider reasonable,

subject to an appeal to the court.

(5) Where any person without reasonable excuse fails to

comply with the requirements of this section, he shall be

guilty of an offence and be liable on conviction to a fine not

exceeding two hundred thousand rupees.

(6) Any person claiming in writing to be a creditor or

contributory of the company shall be entitled by himself or

by his agent at all reasonable times, on payment of the

prescribed fee to inspect the statement submitted in pursuance

of the provisions of this section and to a copy of or extract

from such statement.

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(7) Any person claiming to be a creditor or contributory

knowing it to be false shall be guilty of a contempt of court

and shall on the application of the liquidator or of the official

receiver, be punishable for such contempt.

(8) In this section the expression “the relevant date”

means, in a case where a provisional liquidator is appointed,

the date of his appointment and in case where no such

appointment is made, the date of the winding up order.

Report by 284. (1) In any case where a windingup order is made,

official receiver. the official receiver shall, as soon as practicable after receipt

of the statement to be submitted under the provisions of

section 283 or in any case where the court orders that no such

statement shall be submitted, as soon as practicable after the

date of the order, submit a preliminary report to the court—

(a) as to the number and types of shares issued, the

stated capital and the estimated amount of assets

and liabilities ;

(b) where the company has failed, as to the causes of

the failure ; and

(c) whether in his opinion further inquiry is desirable

as to any matter relating to the promotion,

formation, or failure of the company or the conduct

of the business thereof.

(2) The official receiver may also if he thinks fit, make a

further report or further reports stating the manner in which

the company was formed and whether in his opinion any

fraud has been committed by any person in its promotion or

formation or by any officer of the company in relation to the

company since the formation of such company, and any other

matters which in his opinion it is desirable to bring to the

notice of the court.

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(3) Where the official receiver states in any such further

report as is referred to in subsection (2) that in his opinion a

fraud has been committed, the court shall exercise the powers

set out in section 311 in dealing with such report.

LIQUIDATORS

285. For the purposes of conducting the proceedings in Power of court

winding up a company and performing such duties in reference to appoint

liquidators.

thereto as the court may impose, the court may appoint a

liquidator or liquidators.

286. (1) The court may appoint a liquidator Appointment

provisionally at any time after the presentation of a winding and powers of

provisional

up petition and before the making of a winding up order and

liquidator.

either the official receiver or any other fit person, may be so

appointed.

(2) Where a liquidator is provisionally appointed by the

court, the court may limit and restrict his powers by the order

appointing him.

287. The following provisions with respect to liquidators Appointment

shall have affact on a winding up order being made— style, &c. of

liquidators.

(a) the official receiver shall by virtue of his office

become the provisional liquidator and shall continue

to act as such until he or another person becomes

liquidator and is capable of acting as such ;

(b) the official receiver shall summon separate meetings

of the creditors and contributories of the company,

for the purposes of determining whether or not an

application is to be made to the court for appointing

a liquidator in place of the official receiver ;

(c) the court may make any appointment and make any

order required to give effect to any such

determination, and if there is a difference between

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the determinations of the meetings of the creditors

and contributories in respect of the matter aforesaid,

the court shall decide the difference and make such

order thereon as the court may think fit ;

(d) in a case where the liquidator is not appointed by

the court, the official receiver shall be the liquidator

of the company ;

(e) the official receiver shall by virtue of his office be

the liquidator during any vacancy in the office of

liquidator ;

(f) a liquidator shall be described where a person other

than the official receiver is the liquidator, by the

style of “the liquidator”, and where the official

receiver is liquidator, by the style of “the official

receiver and liquidator” of the particular company

in respect of which he is appointed and not by his

individual name.

Provisions where 288. Where in the winding up of a company by the court,

person other a person other than the official receiver is appointed

than official

receiver is liquidator, that person—

appointed a

liquidator. (a) shall not be capable of acting as liquidator until he

has been notified of such appointment and given

security in the prescribed manner to the Registrar ;

(b) shall give the official receiver such information and

such access to and facilities for inspecting the books

and documents of the company, and generally such

aid as may be required for enabling that officer to

perform his duties under this Act.

General 289. (1) A liquidator appointed by the court may resign

provisions as to or on cause shown, be removed by the court.

liquidators.

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(2) Where a person other than the official receiver is

appointed liquidator, he shall receive such salary or

remuneration by way of percentage or otherwise as the court

may direct, and where more than one such persons are

appointed liquidators, their remuneration shall be distributed

among them in such proportions as the court directs.

(3) A vacancy in the office of a liquidator appointed by

the court shall be filled by the court.

(4) Where more than one liquidator is appointed by the

court, the court shall declare whether any act required or

authorised to be done under the provisions of this Act by the

liquidator, is to be done by all or any one or more of the

persons so appointed.

(5) No act of a liquidator shall be or shall be deemed to be

invalid by reason only of any defect in the appointment or

qualification of such liquidator.

290. Where a windingup order has been made or where Custody of

a provisional liquidator has been appointed, the liquidator company’s

or the provisional liquidator, as the case may be, shall take property.

into his custody or under his control all the property and

things in action to which the company is or appears to be

entitled.

291. Where a company is being wound up by the court, Vesting of

the court may on the application of the liquidator by order property of

company in

direct that that all or any part of the property of whatever

liquidator.

description belonging to the company or held by trustees on

its behalf, shall vest in the liquidator by his official name,

and thereupon the property to which the order relates shall

vest accordingly and the liquidator may, after giving such

indemnity, if any, as the court may direct, bring or defend in

his official name any action or other legal proceedings which

relates to that property or which it is necessary to bring or

defend for the purpose of effectually winding up the company

and recovering its property.

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Powers of 292. (1) The liquidator in a winding up by the court

liquidator. shall have power, with the sanction either of the court or of

the committee of inspection—

(a) to bring or defend any action or other legal

proceeding in the name and on behalf of the

company ;

(b) to carry on the business of the company so far as

may be necessary for the beneficial winding up of

such company ;

(c) to appoint an attorney-at-law to assist him in the

performance of his duties ;

(d) to pay any classes of creditors in full ;

(e) to make any compromise or arrangement with

creditors or persons claiming to be creditors or

having or alleging themselves to have any claim,

present or future, certain or contingent, ascertained

or sounding only in damages against the company

or whereby the company may be rendered liable ;

(f) to compromise all calls and liabilities to calls, debts,

and liabilities capable of resulting in debts and all

claims, present or future, certain or contingent,

ascertained or sounding only in damages, subsisting

or alleged to subsist between the company and a

contributory or alleged contributory or other debtor

or person apprehending liability to the company,

and all questions in any way relating to or affecting

the assets or the winding up of the company, on

such terms as may be agreed and take any security

for the discharge of any such call, debt, liability or

claim and give a complete discharge in respect

thereof.

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(2) The liquidator in a winding up by the court shall have

power—

(a) to sell the movable and immovable property and

things in action of the company by public auction

or private contract, with power to transfer the whole

thereof to any person or company or to sell the same

in parcels;

(b) to do all acts and to execute in the name and on

behalf of the company, all deeds, receipts, and other

documents and for that purpose to use when

necessary, the seal of the company, if any ;

(c) to prove, rank and claim in the bankruptcy,

insolvency or sequestration of any contributory for

any balance against his estate, and to receive

dividends in the bankruptcy, insolvency or

sequsetration in respect of that balance as a separate

debt due from the bankrupt or insolvent, and rateably

with the other seperate creditors ;

(d) to draw, accept, make and endorse any bills of

exchange or promissory note or like instruments in

the name and on behalf of the company, with the

same effect with respect to the liability of the company

as if the bill or note or such instrument had been

drawn, accepted, made, or endorsed by or on behalf

of the company in the course of its business;

(e) to raise on the security of the assets of the company

any money required ;

(f) to take out in his official name letters of

administration to any deceased contributory, and to

do in his official name any other act necessary for

obtaining payment of any money due from a

contributory or his estate which cannot be

conveniently done in the name of the company, and

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in all such cases the money due shall, for the purpose

of enabling the liquidator to take out the letters of

administration or recover the money, be deemed to

be due to the liquidator himself :

Provided that nothing herein empowered shall

be deemed to affect the rights, duties, and privileges

of the Public Trustee appointed under the Public

Trustee Ordinance (Cap. 88) ;

(g) to appoint an agent to do any business on behalf of

such liquidator ;

(h) to do all such other things as may be necessary for

windingup the affairs of the company and

distributing its assets.

(3) The exercise by the liquidator in a winding up by the

court of the powers conferred by the provisions of this section,

shall be subject to the control of the court and any creditor or

contributory may make an application to the court for the

exercise or proposed exercise of any of those powers.

Exercise and 293. (1) Subject to the provisions of this Act, the

control of liquidator of a company which is being wound up by the

liquidator’s

court shall, in the administration of the assets of the company

powers.

and in the distribution thereof among its creditors, have regard

to any directions that may be given by resolution of creditors

or contributories at any general meeting or by the committee

of inspection, and any directions given by the creditors or

contributories at any general meeting shall in case of conflict,

be deemed to prevail over any directions given by the

committee of inspection.

(2) The liquidator may summon general meetings of the

creditors or contributories for the purpose of ascertaining

their wishes, and it shall be his duty to summon meetings at

such times as the creditors or contributories, by resolution,

either at the meeting appointing the liquidator or otherwise

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may direct, or whenever requested in writing to do so by one-

tenth of the total number of creditors or contributories, as the

case may be.

(3) The liquidator may make an application to court in

the prescribed manner for directions in relation to any

particular matter arising under the winding up.

(4) Subject to the provisions of this Act, the liquidator

shall use his own discretion in the management of the estate

and its distribution among the creditors.

(5) Where any person is aggrieved by any act or decision

of the liquidator, that person may appeal to the court against

such act or decision, and the court may confirm, reverse, or

modify the act or decision complained of and make such

order as it thinks just.

294. Every liquidator of a company which is being Books to be kept

wound up by the court shall keep in the prescribed manner, by liquidators.

proper books in which he shall cause to be made entries or

minutes of proceedings at meetings and of such other matters

as may be prescribed, and any creditor or contributory may

subject to the control of the court, personally or by his agent

inspect any such books.

295. (1) Every liquidator of a company which is being Payments by

wound up by the court shall pay the money received by him liquidator into

into an account or accounts established for the purpose at bank.

one or more licenced commercial banks.

(2) A liquidator of a company which is being wound up

by the court shall not pay any sums received by him as

liquidator into his private banking account.

296. (1) Every liquidator of a company which is being Audit of

wound up by the court shall, at such times as may be liquidator’s

accounts.

prescribed but not less than twice in each year during his

tenure of office, send to the Registrar an account of his receipts

and payments as liquidator.

232 Companies Act, No. 07 of 2007

(2) The account shall be in the prescribed form, shall be

made in duplicate and shall be certified by a statutory

declaration in the prescribed form.

(3) The Registrar shall cause the account to be audited

and for the purpose of the audit the liquidator shall furnish

the Registrar with such vouchers and information as the

Registrar may require and the Registrar may at any time

require the production of and inspect any books or accounts

kept by the liquidator.

(4) When the account has been audited, one copy thereof

shall be filed and kept by the Registrar and the other copy

shall be delivered to the court for filing, and each copy shall

be open to the inspection of any person on payment of the

prescrihed fee.

(5) The liquidator shall send a copy of the account or

summary by post to every creditor and contributory, unless

he considers that it is not practicable to do so, having regard

to the cost of so doing and the value of the assets of the

company.

Control of 297. (1) The Registrar shall take cognizance of the

Registrar over conduct of liquidators of companies which are being wound

liquidator. up by the court, and where a liquidator does not faithfully

perform his duties and duly observe all requirements imposed

on him by any written law or otherwise with respect to the

performance of his duties, or where any complaint is made to

the Registrar by any creditor or contributory in regard thereto,

the Registrar shall inquire into the matter and if necessary,

report to the court.

(2) The Registrar may at any time require any liquidator

of a company which is being wound up by the court to answer

any inquiry in relation to any winding up in which he is

engaged, and may where the Registrar thinks fit so to do,

make an application to court to examine him or any other

person on oath on any matter concerning the winding up.

Companies Act, No. 07 of 2007 233

(3) The Registrar may also direct a local investigation to

be made of the books and vouchers of the liquidator.

298. (1) When the liquidator of a company which is Release of

being wound up by the court has realized all the property of liquidators.

the company or so much thereof as can in his opinion, be

realized without needlessly protracting the liquidation, has

distributed a final dividend, if any, to the creditors and

adjusted the rights of the contributories among themselves

and made a final retuen if any to the contributories, or has

resigned or has been removed from his office, the court shall,

on his application for a release from the office of the

liquidator, cause a report on the accounts to be prepared, and

on his complying with all the requirements of the court, shall

take into consideration the report and any objection which

may be urged by any creditor or contributory or person

interested against the release of the liquidator, and shall either

grant or withhold such release accordingly.

(2) Where the release of a liquidator is withheld, the court

may on the application of any creditor or contributory or

person interested, make such order as it thinks just, charging

the liquidator with the consequences of any act done or

default made by him in the administration of the affairs of the

company.

(3) An order of the court releasing the liquidator shall

discharge him form all liability in respect of any act done or

default made by him in the administration of the affairs of the

company or otherwise in relation to his conduct as liquidator,

but any such order may be revoked on proof that it was

obtained by fraud or by suppression or concealment of any

material fact.

(4) Where the liquidator has not previously resigned or

been removed from office, his release shall have the effect of

a removal of a liquidator from his office.

234 Companies Act, No. 07 of 2007

COMMITTEE OF INSPECTION

Meetings of 299. (1) When a winding up order has been made by

creditors and the court, it shall be the business of the seperate meetings of

contributories

to determine creditors and contributories summoned for the purpose of

whether determining whether or not an application should be made

committee of to the court for appointing a liquidator in place of the official

inspections

shall be receiver, to determine further, whether or not an application

appointed. shall be made to the court for the appointment of a committee

of inspection to act with the liquidator and the persons who

shall be members of such committee, if appointed.

(2) The court may make any appointment or order

required to give effect to any such determination, and where

there is any difference between the determinations of the

meetings of the creditors and contributories in respect of

the matters referred to in subsection (1), the court shall

decide the difference and make such order thereon as the

court may think fit.

Constitution 300. (1) A committee of inspection appointed in

and pursuance of the provisions of this Act shall consist of

proceedings

of committee creditors and contributories of the company or persons

of holding general powers of attorney from creditors or

inspection. contributories in such proportions as may be agreed on at the

meetings of creditors and contributories, or in case of any

difference, as may be determined by the court.

(2) The committee shall meet at such times as they from

time to time appoint, provided that a meeting is held at least

once in every three months. The liquidator or any member of

the committee may also call a meeting of the committee as

and when such liquidator or member, as the case may be,

thinks necessary.

(3) The committee shall not act unless a majority of the

members of the committee are present at the meeting.

Companies Act, No. 07 of 2007 235

(4) A member of the committee may resign by notice in

writing signed by him and delivered to the liquidator.

(5) Where a member of the committee becomes insolvent

or bankrupt or compounds or arranges with his creditors or is

absent from three consecutive meetings of the committee

without the leave of those members who together with himself

represent the creditors or contributories, as the case may be,

his office shall become vacant.

(6) A member of the committee may be removed by an

ordinary resolution at a meeting of creditors if he represents

creditors or of contributories if he represents contributories,

notice of such meeting being given seven days prior to the

date and also stating the objects of such meeting.

(7) On a vacancy occurring in the committee, the

liquidator shall forthwith summon a meeting of creditors or

of contributories, as the case may be, to fill the vacancy and

the meeting may by resolution, re-appoint the same or appoint

another creditor or contributory to fill the vacancy:

Provided that where the liquidator having regard to the

state of the winding up, is of the opinion that it is unnecessary

for the vacancy to be filled, he may make an application to

the court for an order that the vacancy shall not be filled and

the court may make such an order or an order that such

vacancy shall not be filled except in such circumstances as

may be specified in the order.

301. Where in the case of a winding up there is no Powers of court

committee of inspection, the court may on the application of where there is no

committee of

the liquidator, do any act or give any direction or permission inspection.

which by this Act is authorised or required to be done or

given, by the committee.

236 Companies Act, No. 07 of 2007

GENERAL POWERS OF COURT IN CASE OF WINDING UP BY COURT

Power to stay 302. (1) The court may at any time after an order for

winding up. winding up is made, on the application either of the liquidator

or the official receiver or any creditor or contributory, and on

proof to the satisfaction of the court that all proceedings in

relation to the winding up ought to be stayed, make an order

staying the proceedings either altogether or for a limited

time, on such terms and conditions as the court thinks fit.

(2) On any application made under the provisions of

subsection (1), the court may before making an order require

the official receiver to furnish to the court a report with respect

to any facts or matters which are in his opinion relevant to

the application.

(3) A copy of every order made under the provisions of

this section shall forthwith be forwarded by the company or

otherwise as may be prescribed to the Registrar, who shall

forthwith make a minute of the order in his books relating to

the company.

Settlement of list 303. (1) As soon as may be after making a winding up

of contributories order, the court shall settle a list of contributories, with power

and application

of assets. to rectify the share register in all cases where rectification is

required in pursuance of this Act and shall cause the assets of

the company to be collected and applied in discharge of its

liabilities:

Provided that where it appears to the court that it will not

be necessary to make calls on or adjust the rights of

contributories, the court may dispense with the settlement of

a list of contributories.

(2) In settling the list of contributories, the court shall

distinguish between persons who are contributories in their

own right and persons who are contributories as being

representatives of or liable for the debts of others.

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304. The court may, at any time after making a winding Delivery of

up order, require any contributory for the time being on the property to

liquidator.

list of contributories, and any trustee, receiver, banker, agent

or officer of the company to pay, deliver, convey, surrender or

transfer forthwith or within such time as the court directs, to

the liquidator any money, property, or books and papers in

his hand to which the company is prima facie entitled.

305. (1) The court may at any time after making a Payment of debts

winding up order, make an order on any contributory for the due by

time being on the list of contributories, to pay in the manner contributory to

company and

directed by the order, any money due from him or from the

extent to which

estate of the person whom he represents to the company, set off is

exclusive of any money payable by him or such estate by allowed.

virtue of any call in pursuance of this Act.

(2) The court in making such an order may in the case of

an unlimited company, allow to the contributory by way of

set-off any money due to him or to the estate which he

represents from the company, on any independent dealing or

contract with the company, but not any money due to him as

a member of the company in respect of any dividend or profit.

(3) In the case of any company whether limited or

unlimited, when all the creditors are paid in full, any money

due on any account whatever to a contributory from the

company may be allowed to him by way of set-off against

any subsequent call.

306. (1) The court may order any contributory, purchaser Payment into

or other person from whom money is due to the company, to bank of moneys

pay the amount due into a specified bank or any branch due to company.

thereof to the account of the liquidator instead of to the

liquidator, and any such order may be endorsed in the same

manner as if it had directed payment to the liquidator.

(2) All moneys and securities paid or delivered into a

specified bank or any branch thereof in the event of a winding

up by the court shall be subject in all respects to the orders of

the court.

238 Companies Act, No. 07 of 2007

Appointment of 307. (1) Where the official receiver becomes the

special manager. liquidator of a company whether provisionally or otherwise,

he may where satisfied that the nature of the estate or business

of the company or the interests of the creditors or

contributories generally, require the appointment of a special

manager of the estate or business of the company other than

himself, make an application to court for the appointment of

a special manager of the estate or business of the company,

and the court may on such application appoint a special

manager of the said estate or business to act during such time

as the court may direct, with such powers including any of

the powers of a receiver or manager, as may be entrusted to

him by the court.

(2) The special manager appointed under the provisions

of subsection (1), shall give such security and account in

such manner as the court directs.

(3) The special manager appointed under the provisions

of subsection (1) shall receive such remuneration as may be

fixed by the court.

Inspection of 308. The court may at any time after making a winding

books by up order, make such order for inspection of the books and

creditors and

contributories. papers of the company by creditors and contributories as the

court thinks just, and any books and papers in the possession

of the company may be inspected by creditors or

contributories accordingly.

Power to order 309. The court may in the event of the assets being

costs of winding insufficient to satisfy the liabilities, make an order as to the

up to be paid out payment out of the assets of the costs, charges, and expenses

of assets.

incurred in the winding up, in such order of priority as the

court thinks just.

Power to 310. (1) The court may at any time after the appointment

summon persons of a provisional liquidator or the making of a winding up

suspected of

having property order, summon before it any officer of the company or person

of company. known or suspected to have in his possession any property of

the company or alleged to be indebted to the company, or

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any person whom the court deems capable of giving

information concerning the promotion, formation, trade,

dealings, affairs or property of the company.

(2) The court may examine on oath any officer or person

summoned under the provisions of subsection (1) on any

matter referred to in that subsection, either orally or on written

interrogatories, and may where such examination is conducted

orally, reduce the answers to writing and require such officer

or person to sign it.

(3) The court may require any officer or person summoned

under the provisions of subsection (1), to produce any books

and papers in his custody or power relating to the company,

but where such officer or person claims any lien on such

books or papers produced by him, the production shall be

without prejudice to that lien, and the court shall have

jurisdiction in the winding up to determine all questions

relating to that lien.

(4) Any officer or person summoned under the provisions

of subsection (1) who refuses or fails without reasonable cause,

to appear before court or to produce any books or papers

required to be produced by him at the time and on the date

specified in the summons, shall be liable to be arrested and

produced before court for examination.

311. (1) Where an order has been made by the court for Power to order

the winding up of a company and the official receiver has public

examination of

made a further report under the provisions of this Act, stating

promoters,

that in his opinion a fraud has been committed by any person directors &c.

in the promotion or formation of the company or by any

officer of the company in relation to the company since its

formation, the court may after consideration of such report,

direct that such person or officer shall attend before the court

on a day appointed by the court for that purpose, and be

publicly examined as to the promotion or formation or the

conduct of the business of the company or as to his conduct

and dealing as officer thereof.

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(2) The official receiver may make representations at the

examination referred to in subsection (1), and for that purpose

may be represented by an attorney at-law.

(3) The liquidator, where the official receiver is not the

liquidator, and any creditor or contributory may also take

part in the examination either personally or by an attorney-

at-law.

(4) The person or officer examined under the provisions

of this section shall be examined on oath or affirmation and

shall answer all such questions as the court may put or allow

to be put to him

Person or officer 312. (1) A person or officer directed to be examined

being examined under the provisions of section 311 shall at his own cost,

to be represented

before being so examined, be furnished with a copy of the

by an attorney-

at-law, &c,. report of the official receiver and may at his own cost be

represented by an attorney-at-law, who shall be at liberty to

put to such person or officer such questions as the court may

deem just for the purpose of enabling him to explain or qualify

any answers given by him:

Provided that, where any such person or officer makes an

application to court to be exculpated from any charges made

or alleged against him, it shall be the duty of the official

receiver to appear at the hearing of the application and draw

the attention of the court to any matters which appear to the

official receiver to be relevant, and where the court after

hearing any evidence given or witnesses called by the official

receiver, grants the application, the court may allow the

applicant such costs as it may in its discretion, thinks fit.

(2) Proceedings of the examination held under section

311 shall be reduced to writing and shall be read over to or

by, and signed by the person or officer examined, and may

thereafter be used in evidence against him and shall be open

to the inspection of any creditor or contributory at all

reasonable times.

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(3) The court may if it thinks fit, adjourn the examination

from time to time.

313. The court may at any time either before or after Power to arrest

making a winding up order, on reasonable cause being shown absconding

for believing that a contributory is about to leave Sri Lanka contributory.

or otherwise to abscond or to remove or conceal any of his

property for the purpose of evading payment of calls, or for

avoiding examination with respect to the affairs of the

company, may cause the contributory to be arrested, and his

books and papers and movable personal property to be seized

and kept in safe custody until such time, as the court may

specify.

314. Any powers by this Act conferred on the court shall Powers of court

be in addition to and not in restriction of any existing powers cumulative.

of instituting proceedings against any contributory or debtor

of the company or the estate of any contributory or debtor,

for the recovery of any call or other sums.

315. The Minister may make rules for enabling or Delegation to

requiring all or any of the powers and duties conferred and liquidator of

certain powers of

imposed on the court by this Act, in respect of—

court.

(a) the holding and conducting of meetings to ascertain

the wishes of creditors and contributories;

(b) the settling of lists of contributories and the

rectifying of the register of members where required,

and the collecting and applying of the assets;

(c) the paying, delivery, conveyance, surrender or

transfer of money, property, books or papers to the

liquidator;

(d) the fixing of a time within which debts and claims

shall be proved,

to be exercised or performed by the liquidator as an officer of

the court and subject to the control of the court:

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Provided that the liquidator shall not without the special

leave of the court, rectify the register of members and shall

not make any call without either the special leave of the

court or the sanction of the committee of inspection.

Dissolution of a 316. (1) Where the affairs of a company have been

company. completely wound up, the court shall where the liquidator

makes an application in that behalf, make an order that the

company be dissolved from the date of such order and the

company shall be dissolved accordingly.

(2) A copy of the order made under the provisions of

subsection (1) shall, within fifteen days from the date of such

order, be forwarded by the liquidator to the Registrar who

shall make in his books a minute of the dissolution of the

company.

(3) Where the liquidator fails to comply with the

requirements of this section, he shall be guilty of an offence

and be liable on conviction to a fine not exceeding one

hundred thousand rupees.

Manner of 317. Any order made by a court under this Act may be

enforcing order enforced in the same manner in which a decree of such court

of court.

made in any suit pending therein may be enforced.

Enforcement of 318. Where any order made by one court is required to

winding up be enforced by any other court, a certified copy of the order

order in another

court. shall be produced to the court required to enforce the same,

and the production of a certified copy shall be sufficient

evidence of the order, and thereupon such other court shall

take the requisite steps in the matter for enforcing the order,

in the same manner as if it had been made by that court.

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(III) VOLUNTARYWINDING UP

RESOLUTION FOR AND COMMENCEMENT OF VOLUNTARY WINDING UP

319. (1) A company may be wound up voluntarily— Circumstances in

which a

company may be

(a) when the period if any, fixed for the duration of the wound up

company by the articles expires or the event if any, voluntarily.

occurs on the occurrence of which the articles

provide that the company is to be dissolved, and

the company at a general meeting has passed a

resolution requiring the company to be wound up

voluntarily;

(b) where the company resolves by special resolution

that the company be wound up voluntarily;

(c) where the company resolves by special resolution

to the effect that it cannot by reason of its liabilities

continue its business and that it is advisable to wind

up.

(2) In this Act the expression “a resolution for voluntary

winding up” means a resolution passed under the provisions

of subsection (1).

320. (1) When the company has passed a resolution for Notice of

voluntary winding up, it shall within fourteen days from the resolution to

wind up

date of the passing of the resolution, give notice of the voluntarily.

resolution by publication in the Gazette.

(2) Where the company fails to comply with the provisions

of this section —

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding one

hundred thousand rupees; and

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(b) every officer of the company who is in default shall

be guilty of an offence and be liable on conviction

to a penalty not exceeding fifty thousand rupees.

(3) For the purposes of this section, the liquidator of

company shall be deemed to be an officer of the company.

Commencement 321. A voluntary winding up shall be deemed to

of voluntary commence at the time of the passing of the resolution for

winding up.

voluntary winding up.

CONSEQUENCES OFVOLUNTARYWINDING UP

Effect of 322. In the case of a voluntary winding up, the company

voluntary shall from the date of commencement of the winding up,

winding up on

cease to carry on its business except so far as may be required

business and

status of for the beneficial winding up thereof:

company.

Provided that the corporate state and corporate powers of

the company shall, notwithstanding anything to the contrary

in its articles, continue until such company is dissolved.

Avoidance of 323. Any transfer of shares, not being a transfer made to

transfers,&c., or with the sanction of the liquidator and any alteration in

after the status of the shareholders of the company made after the

commencement

of voluntary date of commencement of a voluntary winding up, shall be

void.

DECLARATION OFSOLVENCY

Statutory 324. (1) Where it is proposed to wind up a company

declaration voluntarily, the directors of the company or in the case of a

of solvency company having more than two directors the majority of the

in case of

proposal to directors may at a meeting of the directors, make a statutory

wind up declaration to the effect that they have made a full inquiry

voluntarily. into the affairs of the company and that they are of the opinion

that the company will be able to pay its debts in full within

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such period not exceeding twelve moths, from the date of

commencement of the winding up as may be specified in the

declaration.

(2) A declaration made under the provisions of subsection

(1) shall have no effect for the purposes of this Act, unless—

(a) it is made within the five weeks immediately

preceding the date of the passing of the resolution

for winding up of the company and is delivered to

the Registrar for registration by that date; and

(b) it embodies a statement of the company’s assets and

liabilities as at the latest practicable date before the

making of such declaration.

(3) A winding up in the case of which a declaration has

been made and delivered in accordance with the provisions

of this section, is in this Act referred to as “a shareholders’

voluntary winding up”, and a winding up in the case of which

a declaration has not been so made and delivered, is in this

Act referred to as “a creditors’ voluntary winding up”.

PROVISIONSAPPLICABLETOASHAREHOLDERS’ VOLUNTARYWINDING UP

325. The provisions of sections 326 to 332 (both Provisions

inclusive) shall, subject to the provisions of section 326, relating to a

shareholders’

apply in relation to a shareholders’ voluntary winding up. voluntary

winding up.

326. (1) The company at a general meeting shall Power of

appoint one or more liquidators for the purpose of winding company to

appoint and fix

up the affairs and distributing the assets of the company and

remuneration of

may fix the remuneration to be paid to each such liquidator.

liquidators.

(2) On the appointment of a liquidator, all the powers of

the directors shall cease, execpt so far as the company in

general meeting or the liquidator sanctions the continuance

thereof.

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Power to fill 327. (1) Where a vacancy occurs by death, resignation,

vacancy in or otherwise in the office of liquidator appointed by the

office of

liquidator. company, the company at a general meeting may, subject to

any arrangement with its creditors, fill the vacancy.

(2) For the purpose of filing a vacancy in the office of

liquidator, a general meeting of the company may be

convened by any contributory or where there are more

liquidators than one, by the continuing liquidators.

(3) The meeting referred to in subsection (2) shall be held

in the manner provided by this Act or by the articles or in

such manner as may on application by any contributory or

by the continuing liquidators, be determined by the court.

Power of 328. (1) Where a company is proposed to be or is in the

liquidator to course of being, wound up voluntarily, and the whole or part

accept shares

of its business or property is proposed to be transferred or

&c. in

consideration sold to another company, whether a company within the

for sale of meaning of this Act or not (in this section called “the transferee

property of

company”) the liquidator of the first-mentioned company

company.

(in this section called “the transferor company”) may with

the sanction of a special resolution of that company conferring

either a general authority on the liquidator or an anthority in

respect of any particular arrangement, receive in

compensation or part compensation for the transfer or sale,

shares, policies or other like interests in the transferee

company for distribution among the shareholders of the

transferor company, or may enter into any other arrangement

whereby the shareholders of the transferor company may, in

lieu of receiving cash, shares, policies, or other like interest,

or in addition thereto, participate in the profits of or receive

any other benefit from the transferee company.

(2) Any sale or arrangement in pursuance of the provisions

of this section shall be binding on the shareholders of the

transferor company.

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(3) Where any shareholder of the transferor company who

did not vote in favour of the special resolution expresses his

dissent therefrom in writing addressed to the liquidator and

is left at the registered office of the company within seven

days from the date of the passing of the resolution, he may

require the liquidator either to abstain from carrying the

resolution into effect or to purchase his interest at a price to

be determined by agreement or by court, upon application

made to court by the shareholder or the liquidator in the

manner provided for by this section.

(4) Where the liquidator elects to purchase the

shareholder’s interest, the purchase money shall be paid

before the company is dissolved and be raised by the

liquidator in such manner as may be determined by special

resolution.

(5) A special resolution shall not be invalid for the

purposes of this section by reason that it is passed before or

concurrently with a resolution for voluntary winding up or

for appointing liquidators, but where an order is made within

a year of the date of passing of the resolution for winding up

the company, by or subject to the supervision of the court,

the special resolution shall not be valid unless sanctioned by

the court.

329. (1) Where the liquidator at any time is of opinion Duty of

that the company will not be able to pay its debts in full liquidators to call

creditiors’

within the period stated in the declaration made under the meeting in case

provisions of section 324, he shall forthwith summon a of insolvency.

meeting of the creditors and shall lay before the meeting a

statement of the assets and liabilities of the company.

(2) Where the liquidator fails to comply with the

provisions of this section, he shall be guilty of an offence

and be liable on conviction to a fine not exceeding fifty

thousand rupees.

248 Companies Act, No. 07 of 2007

Duty of 330. (1) Subject to the provisions of section 332, in the

liquidator to

event of the winding up continuing for more than one year,

call general

meeting at the liquidator shall summon a general meeting of the

end of each company at the end of the first year from the date of

year. commencement of the winding up, and of each succeeding

year or at the first convenient date within three months from

the end of the year or such longer period as the Registrar may

allow, and shall lay before the meeting an account of his acts

and dealings and of the conduct of the winding up during the

preceding year.

(2) Where the liquidator fails to comply with the

provisions of this section, he shall be guilty of an offence

and be liable on conviction to a fine not exceeding fifty

thousand rupees.

Final 331. (1) Subject to the provisions of section 332, as

meeting and soon as the affairs of the company are fully wound up, the

dissolution.

liquidator shall make up an account of the winding up

showing how the winding up has been conducted and the

property of the company has been disposed of, and thereupon

shall call a general meeting of the company for the purpose

of laying before it the account and giving an explanation

thereof.

(2) The meeting referred to in subsection (1) shall be called

by a notice published in the Gazette, specifying the date,

time, place, and object thereof and published at least one

month before such date.

(3) Within one week after the meeting referred to in

subsection (1), the liquidator shall send to the Registrar a

copy of the account and shall make a return to him of the

holding of the meeting and of its date, and where the copy is

not sent or the return is not made in accordance with the

provisions of this subsection, the liquidator shall be guilty

of an offence and be liable on conviction to a fine not

exceeding fifty thousand rupees :

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Provided that where a quorum is not present at the meeting,

the liquidator shall in lieu of the return referred to in the

preceding provisions, make a return that the meeting was

duly summoned and that no quorum was present thereat, and

upon such a return being made the provisions of this

subsection as to the making of the return shall be deemed to

have been complied with.

(4) The Registrar on receiving the account and either of

the returns referred to in subsection (3), shall forthwith register

them and on the expiration of three months from the date of

the registration of the return, the company shall be deemed

to be dissolved :

Provided that the court may on the application of the

liquidator or of any other person who appears to the court to

be interested, make an order deferring the date at which the

dissolution of the company is to take effect, for such time as

the court thinks fit.

(5) It shall be the duty of the person on whose application

an order of the court under the provisions of this section is

made, within seven days from the date of making of the order

to deliver to the Registrar a certified copy of such order for

registration, and where such person fails so to do, he shall be

guilty of an offence and be liable on conviction to a fine not

exceeding fifty thousand rupees.

(6) Where a liquidator fails to call a general meeting of

the company as required by the provisions of this section, he

shall be guilty of an offence and be liable on conviction to a

fine not exceeding fifty thousand rupees.

332. In any case where the provisions of section 329 Alternative

have effect, the provisions of sections 340 and 341 shall provision as to

annual and final

apply to the winding up to the exclusion of the provisions of meetings in case

sections 330 and 331, as if the winding up were a creditors’ of insolvency.

voluntary winding up and not a members’ voluntary winding

up :

250 Companies Act, No. 07 of 2007

Provided that the liquidator shall not be required to

summon a meeting of creditors under the provisions of section

340 at the end of the first year from the date of the

commencement of the winding up, unless the meeting held

under the provisions of section 329 is held more than three

months before the end of that year.

PROVISIONSAPPLICABLE TO ACREDITOR’SVOLUNTARYWINDING UP

Provisions 333. The provisions of sections 334 to 341 (both

applicable to a

inclusive) shall apply in relation to a creditor’s voluntary

creditors’

winding up. winding up.

Meeting of 334. (1) The company shall cause a meeting of the

creditors. creditors of the company to be summoned for the day or the

day next following the day, on which there is to be held the

meeting at which the resolution for voluntary winding up is

to be proposed, and shall cause the notices of such meeting

of creditors to be sent by post to the creditors, simultaneously

with the sending of the notices of the said meeting of the

company.

(2) The company shall cause notice of the meeting of the

creditors to be published in the Gazette and at least in two

local newspapers circulating in the district where the

registered office or principal place of business of the company

is situated.

(3) The directors of the company shall—

(a) cause a full statement of the position of the

company’s affairs together with a list of creditors of

the company and the estimated amount of their

claims are to be laid before the meeting of creditors

to be held, as referred to in subsection (1) ; and

(b) appoint one of their number to preside at such

meeting.

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(4) It shall be the duty of the director appointed to preside

at the meeting of creditors to attend the meeting and preside

thereat.

(5) Where the meeting of the company at which the

resolution for voluntary winding up is to be proposed is

adjourned and the resolution is passed at an adjourned

meeting, any resolution passed at the meeting of the creditors

held in pursuance of the provisions of subsection (1), shall

have effect as if it had been passed immediately after the

passing of the resolution for winding up of the company.

(6) Where default is made—

(a) by the company in complying with the provisions

of subsections (1) and (2) ;

(b) by the directors of the company in complying with

the provisions of subsection (3) ;

(c) by any director of the company in complying with

the provisions of subsection (4),

such company or any such director, as the case may be, shall

be guilty of an offence and be liable on conviction to a fine

not exceeding two hundred thousand rupees and in the case

of default by the company, every officer of the company who

is in default shall be guilty of an offence and be liable on

conviction to a penalty not exceeding one hundred thousand

rupees.

335. The creditors and the company at their respective Appointment of

meetings referred to in section 334, may nominate a person liquidator.

to be liquidator for the purpose of winding up the affairs and

distributing the assets of the company and where the creditors

and the company nominate different persons, the person

nominated by the creditors shall be the liquidator, and where

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no person is nominated by the creditors, the person if any,

nominated by the company shall be the liquidator :

Provided that, in the case of different persons being

nominated, any director, shareholder or creditor of the

company may, within seven days from the date on which the

nomination was made by the creditors, make an application

to court for an order, either directing that the person nominated

as liquidator by the company shall be liquidator instead of or

jointly with the person nominated by the creditors or

appointing some other person to be liquidator instead of the

person appointed by the creditors.

Appointment of 336. (1) The creditors at the meeting held in pursuance

committee of of the provisions of section 334 or at any subsequent meeting

inspection.

may, if they think fit, appoint a committee of inspection

consisting of not more than five person, and where such a

committee is appointed the company may either at the

meeting at which the resolution for voluntary winding up is

passed or at any time subsequently at a general meeting,

appoint such number of persons not exceeding five as they

think fit, to act as members of the committee :

Provided that the creditors may if they think fit, resolve

that all or any of the persons so appointed by the company

ought not to be members of the committee of inspection, and

where the creditors so resolve the persons specified in the

resolution shall not, unless the court otherwise directs, be

qualified to act as members of the committee and on any

application to the court under the provisions of this section

the court may, if it thinks fit, appoint other persons to act as

such members in place of the persons specified in the

resolution.

(2) Subject to the provisions of any rule made under this

Act, the provisions of section 300, other than the provisions

of subsection (1) of that section, shall apply with respect to a

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committee of inspection appointed under the provisions of

this section, as they apply with respect to a committee of

inspection appointed in a winding up by the court.

337. (1) The committee of inspection or where there is Fixing of

no such committee the creditors, may fix the remuneration to liquidators’

remuneration

be paid to the liquidator or liquidators.

and ceasing of

directors’

(2) On the appointment of a liquidator, all the powers of powers.

the directors shall cease, except so far as the committee of

inspection, or where there is no such committee the creditors,

sanction the continuance thereof.

338. Where a vacancy occurs by death, resignation or Power to fill

otherwise in the office of a liquidator, other than a liquidator vacancy in office

of liquidator.

appointed by or by the direction of the court, the creditors

may fill the vacancy.

339. The provisions of section 328 shall apply in the Application of

case of a creditors’ voluntary winding up as in the case of a section 328 to a

creditors’

members’ voluntary winding up, with the modification that

voluntary

the powers of the liquidator under that section shall not be winding up.

exercised except with the sanction either of the court or of

the committee of inspection.

340. (1) In the event of the winding up continuing for Duty of

more than one year, the liquidator shall summon a general liquidator to call

meetings of

meeting of the company and a meeting of the creditors at the

company and of

end of the first year from the commencement of the winding creditors at end

up and each succeeding year or at the first convenient date of each year.

within three months from the end of the year or such longer

period as the Registrar may allow, and shall lay before the

meeting an account of his acts and dealings and of the conduct

of the winding up during the preceding year.

(2) Where the liquidator fails to comply with the

provisions of this section, he shall be guilty of an offence

and be liable on conviction to a fine not exceeding fifty

thousand rupees.

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Final meeting 341. (1) As soon as the affairs of the company are fully

and dissolution. wound up, the liquidator shall make up an account of the

winding up showing how the winding up has been conducted

and the property of the company has been disposed of, and

thereupon shall call a general meeting of the company and a

meeting of the creditors, for the purpose of laying the account

before the meetings and giving an explanation thereof.

(2) Every meeting referred to in subsection (1) shall be

called by notice published in the Gazette, specifying the

date, time, place, and object thereof and published at least

one month before such date.

(3) Within one week form the date of the meetings referred

to in subsection (1), or where such meetings are not held on

the same date, from the date of the later meeting, the liquidator

shall send to the Registrar a copy of the account and shall

make a return to him of the holding of the meetings and of

their dates, and where the copy is not sent or the return is not

made in accrodance with the provisions of this subsection,

the liquidator shall be guilty of an offence and be liable on

conviction to a fine not exceeding fifty thousand rupees :

Provided that, where a quorum is not present at either

such meeting, the liquidator shall in lieu of the return referred

to in the preceding provisions, make a return that the meeting

was duly summoned and that no quorum was present thereat,

and upon such a return being made the provisions of this

subsection as to the making of the return shall, in respect of

that meeting, be deemed to have been complied with.

(4) The Registrar on receiving the account in respect of

each meeting referred to in subsection (1) and either of the

returns referred to in subsection (3), shall forthwith register

them and on the expiration of three months from the date of

registration thereof, the company shall be deemed to be

dissolved :

Provided that the court may on the application of the

liquidator or of any other person who appears to the court to

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be interested, make an order deferring the date at which the

dissolution of the company is to take effect for such time as

the court thinks fit.

(5) It shall be the duty of the person on whose application

an order of the court under the provisions of this section is

made, within seven days from the date of the making of the

order, to deliver to the Registrar a certified copy of the order

for registration and where that person fails so to do, he shall

be guilty of an offence and be liable on conviction to a fine

not exceeding fifty thousand rupees.

(6) Where a liquidator fails to call a general meeting of

the company or a meeting of the creditors as required by the

provisions of this section, he shall be guilty of an offence

and be liable on conviction to a fine not exceeding fifty

thousand rupees.

PROVISIONSAPPLICABLE TO EVERYVOLUNTARYWINDING UP.

342. The provisions of sections 343 to 350 (both Provisions

inclusive) shall apply to every voluntary winding up, whether applicable to

every voluntary

a shareholders’ or a creditors’ winding up.

winding up.

343. Subject to the provisions of this Act as to preferential Distribution of

payments, the property of a company shall on its winding up property of

company.

be applied in satisfaction of it liabilities pari passu, and

subject to such application, shall, unless the articles otherwise

provide, be distributed among the shareholders according to

their rights and interests in the company.

344. (1) The liquidator may— Powers and

duties of

liquidator in

(a) in the case of a shareholders’ voluntary winding up

voluntary

with the sanction of a special resolution of the winding up.

company, and in the case of a creditors’ voluntary

winding up with the sanction of either the court or

the committee of inspection or (if there is no such

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committee) a meeting of creditors, exercise any of

the powers specified in the provisions of paragraphs

(d), (e) and (f) of subsection (1) of section 292 in

relation to a liquidator in a winding up by the court;

(b) without sanction exercise any power other than

those referred to in paragraph (a), given by this Act

to the liquidator in a winding up by the court ;

(c) exercise the power of the court under the provisions

of this Act of setting of list of contributories, and the

list of contributories shall be prima facie evidence

of the liability of the persons named therein to be

contributories ;

(d) exercise the power of the court of making calls ;

(e) summon general meetings of the company for the

purpose of obtaining the sanction of the company

by special resolution or for any other purpose the

liquidator may think fit.

(2) The liquidator shall pay the debts of the company

and shall adjust the rights of the contributories among

themselves.

(3) When several liquidators are appointed, any power

given by this Act may be exercised by such one or more of

them as may be determined at the time of their appointment,

or in default of such determination, by any number not less

than two.

Power of court 345. (1) Where for any cause whatever, there is no

to appoint and liquidator acting, the court may appoint a liquidator.

remove

liquidator in

voluntary (2) The court may on cause shown, remove a liquidator

winding up. and appoint another liquidator.

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346. (1) A liquidator appointed under any of the Notice by

provisions of this Act shall, within fourteen days from the liquidator of his

appointment.

date of his appointment, publish in the Gazette and deliver

to the Registrar for registration, a notice of his appointment

in the prescribed form.

(2) Where the liquidator fails to comply with the

requirements of subsection (1), he shall be guilty of an offence

and be liable on conviction to a fine not exceeding fifty

thousand rupees.

347. (1) Any arrangement entered into between a Arrangement

company about to be or in the course of being wound up, and when binding on

creditors.

its creditors shall, subject to the right of appeal under the

provisions of this section, be binding on the company where

sanctioned by a special resolution, and on the creditors where

acceded to by three-fourths the number and value of the

creditors.

(2) Any creditor or contributory may within three weeks

from the completion of the arrangement appeal to the court

against such arrangement, and the court may thereupon as it

thinks just, amend, vary or confirm the arrangement.

348. (1) The liquidator or any contributory or creditor Power to apply

may make an application to court to determine any question to court to have

arising in the winding up of a company or to exercise, as question

determined or

respects the enforcing of calls or any other matter, all or any powers

of the powers which the court might exercise if the company exercised.

were being wound up by the court.

(2) The court if satisfied that the determination of the

question or the required exercise of power will be just and

beneficial, may accede wholly or partially to the application

on such terms and conditions as it thinks fit or may make

such other order on the application as it thinks just.

(3) A copy of an order made by virtue of the provisions of

subsection (2) staying the proceedings in the winding up,

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shall forthwith be forwarded by the company or otherwise as

may be prescribed, to the Registrar who shall make a minute

of the order in his books relating to the company.

Costs of 349. All costs, charges, and expenses properly incurred

voluntary

winding up. in the winding up including the remuneration of the liquidator,

shall be payable out of the assets of the company in priority

to all other claims.

Saving for rights 350. The winding up of a company shall not bar the right

of creditors and

of any creditor or contributory to have it wound up by the

contributories.

court, but where an application for winding up is made by a

contributory, the court shall be satisfied that the rights of the

contributories will be prejudiced by a voluntary winding up.

(IV) WINDING UP SUBJECT TO SUPERVISION OF COURT

Power to order 351. When a company has passed a resolution for

winding up voluntary winding up, the court may make an order that the

subject to

voluntary winding up shall continue but subject to such

supervision.

supervision of the court, and with such liberty for creditors,

contributories or others to apply to the court, and generally

on such terms and conditions as the court thinks just.

Effect of 352. A petition for the continuance of a voluntary

petition for winding up subject to the supervision of the court shall, for

winding up

the prupose of giving jurisdiction to the court over actions,

subject to

supervision. be deemed to be a petition for winding up by the court.

Applications of 353. A winding up subject to the supervision of the court

section 275 and

shall for the purposes of sections 275 and 276 be deemed to

276 to winding

up subject to be a winding up by the court.

supervision.

Power of 354. (1) Where an order is made by court for a winding

court to up subject to supervision, the court may by that or any

appoint or

subsequent order, appoint an additional liquidator.

remove

liquidators.

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(2) A liquidator appointed by the court under the

provisions of subsection (1) shall have the same powers, be

subject to the same obligations, and in all respects have the

same position, as if he had been duly appointed in accordance

with the provisions of this Act with respect to the appointment

of liquidators in a voluntary winding up.

(3) The court may remove any liquidator appointed under

the provisions of subsection (1), or any liquidator in a winding

up continued under the supervision of court and fill any

vacancy occasioned by such removal, or by death or

resignation of any liquidator.

355. (1) When an order is made under the provisions of Effect of

section 351 for a winding up subject to supervision, the supervision

order.

liquidator may subject to any restrictions imposed by the

court, exercise all his powers without the sanction or

intervention of the court, in the same manner as if the

company were being wound up voluntarily :

Provided that the powers specified in the provisions of

paragraphs (d), (e) and (f) of subsection (1) of section 292

shall not be exercised by the liquidator, except with the

sanction of the court or in a case where before the order the

winding up was a creditor’s voluntary winding up, with the

sanction of either the court or the committee of inspection or

where there is no such committee, a meeting of the creditors.

(2) A winding up subject to the supervision of the court

shall not constitute a winding up by the court for the purpose

of the provisions of this Act which are set out in the Eighth

Schedule hereto, but subject as aforesaid, an order for a

winding up subject to supervision shall for all purposes, be

deemed to be an order for winding up by the court:

Provided that, where the order for winding up subject to

supervision was made in relation to a creditors’ voluntary

winding up in which a committee of inspection had been

appointed, the order shall be deemed to be an order for

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winding up by the court for the purposes of the provisions of

section 300, other than the provisions of subsection (1) of

that section, except in so far as the operation of that section

is excluded in a voluntary winding up by rules made under

this Act.

PROOF AND RANKING OF CLAIMS

Admissible 356. A debt or liability present or future, certain or

claims. contingent, whether it is an ascertained debt or liability or a

liability for damages, may be admitted as a claim against a

company in liquidation.

Claims by 357. (1) A claim by an unsecured creditor against a

unsecured company in a winding up shall be made in the prescribed

creditors.

form and shall —

(a) contain full particulars of the claim; and

(b) identify any documents that evidence or

substantiate the claim.

(2) The liquidator may—

(a) require the production of a document referred to in

paragraph (b) of subsection (1); and

(b) require a claim to be verified by affidavit.

(3) The liquidator shall as soon as practicable, either admit

or reject a claim in whole or in part. If the liquidator

subsequently considers that a claim has been wrongly

admitted or rejected in whole or in part, he may revoke or

amend that decision.

(4) If a liquidator rejects a claim whether in whole or in

part, he shall forthwith give notice in writting of the rejection

to the creditor.

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(5) The costs of making a claim under subsection (1) or

producing a document under subsection (2), shall be met by

the creditor making the claim.

(6) Every person who—

(a) makes or authorises the making of a claim under

this section that is false or misleading in a material

particular knowing it to be false or misleading; or

(b) omits or authorises the omission from a claim under

this section, of any matter knowing that the omission

makes the claim false or misleading in a material

particular,

shall be guilty of an offence and be liable on conviction to a

fine not exceeding one million rupees or to imprisonment for

a term not exceeding five years or to both such fine and

imprisonment.

358. (1) A secured creditor may— Rights and duties

of secured

creditors.

(a) seize, attach and realise, issue execution against or

appoint a receiver in respect of property subject to a

charge, if entitled to do so;

(b) value the property subject to the charge and claim

in the liquidation—

(i) as a secured creditor for the amount of his

claim, up to the value of the security; and

(ii) as an unsecured creditor for the balance due,

if any; or

(c) surrender the charge to the liquidator for the general

benefit of creditors, and claim in the liquidation as

an unsecured creditor for the whole debt.

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(2) A secured creditor may exercise the power referred to

in paragraph (a) of subsection (1) whether or not the secured

creditor has exercised the power referred to in paragraph (b)

of subsection (1).

(3) A secured creditor who realises property subject to a

charge—

(a) may claim as an unsecured creditor for any balance

due after deducting the net amount realised;

(b) shall account to the liquidator for any surplus

remaining from the net amount realised after

satisfaction of the debt, including interest payable

in respect of that debt up to the time of its satisfaction

and after making any proper payments to the holder

of any other charge over the property subject to the

charge.

(4) If a secured creditor values the security and claims as

a secured creditor, the valuation and claim shall be made in

the prescribed form and shall—

(a) contain full particulars of the valuation and claim;

(b) contain full particulars of the charge including the

date on which it was given; and

(c) identify any documents that substantiate the claim

and the charge,

and the provisions of sections 359, 360 and 362 shall apply

to any claim as a secured creditor.

(5) The liquidator may—

(a) require production of any document referred to in

paragraph (c) of subsection (4); and

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(b) require a claim under subsection (4) to be verified

by affidavit.

(6) Where a claim is made by a secured creditor under

subsection (4), the liquidator shall either—

(a) accept the valuation and claim; or

(b) reject the valuation and claim in whole or in part,

but—

(i) where a valuation and claim is rejected in

whole or in part, the creditor may make a

revised valuation and claim within ten

working days of receiving notice of the

rejection; and

(ii) the liquidator may if he subsequently

considers that a valuation and claim was

wrongly rejected in whole or in part, revoke

or amend that decision.

(7) Where the liquidator—

(a) accepts a valuation and claim under paragraph (a)

of subsection (6);

(b) accepts a revised valuation and claim under sub-

paragraph (i) of paragraph (b) of subsection (6); or

(c) accepts a valuation and claim on revoking or

amending a decision to reject a claim under sub-

paragraph (ii) of paragraph (b) of subsection (6),

the liquidator shall unless the secured creditor has realised

the property, redeem the security on payment of the amount

of the claim or the assessed value, whichever is the less.

264 Companies Act, No. 07 of 2007

(8) The liquidator may at any time by notice in writing,

require a secured creditor within twenty working days after

receipt of the notice—

(a) to elect which of the powers referred to in subsection

(1) the creditor whishes to exercise; and

(b) if the creditor elects to exercise the power referred to

in paragraph (b) or paragraph (c) of that subsection,

to exercise the power within that period.

(9) A secured creditor on whom notice has been served

under subsection (8) and who fails to comply with the notice

shall be taken to have surrendered the charge to the liquidator

under paragraph (c) of subsection (1) for the general benefit

of creditors, and may claim in the liquidation as an unsecured

creditor for the whole debt.

(10) A secured creditor who has surrendered a charge

under paragraph (c) of subsection (1) or who is deemed to

have surrendered a charge under subsection (9) may, with the

leave of the court or the liquidator and subject to such terms

and conditions as the court or the liquidator thinks fit, at any

time before the liquidator has realised the property charged—

(a) withdraw the surrender and rely on the charge; or

(b) submit a new claim under this section.

(11) Every person who—

(a) makes or authourises the making of a claim under

subsection (4) that is false or misleading in a material

particular knowing it to be false or misleading; or

(b) omits or authorises the omission from a claim under

subsection (4) of any matter knowing that the

omission makes the claim false or misleading in a

material particular,

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shall be guilty of an offence and be liable on conviction to a

fine not exceeding one million rupees or to a term of

imprisonment not exceeding five years or to both such fine

and imprisonment.

359. (1) The amount of a claim shall be ascertained as Ascertainment of

at the date of commencement of the winding up of the amount of claim.

company.

(2) The amount of a claim based on debt or liability

denominated in a currency other than Sri Lankan currency,

shall be converted into Sri Lankan currency at the rate of

exchange applicable at the close of the date of commencement

of the winding up of the company.

360. (1) If a claim is subject to a contingency or is for Claim not of an

damages or, if for some other reason the amount of the claim ascertained

is not certain, the liquidator shall make an estimate of the amount.

amount of the claim and give notice of that estimate to the

creditor.

(2) On the application of a claimant who is aggrieved by

an estimate made by the liquidator, the court shall determine

the amount of the claim.

361. Nothing in this Part of this Act shall limit or affect Fines, penalties,

the recovery of— or recoveries.

(a) a fine imposed on a company whether before or after

the commencement of the winding up of the

company, for the commission of an offence;

(b) a monetary penalty payable to the State imposed on

a company by a court whether before or after the

commencement of the winding up of the company,

for the breach of any enactment;

(c) costs ordered to be paid by the company in relation

to proceedings for the offence or breach; or

(d) all provident fund dues, employees trust fund dues

and gratuity payments accrued due, prior the

securing of any assets from the sale proceeds of such

secured assets.

266 Companies Act, No. 07 of 2007

Claims relating 362. (1) A claim in respect of a debt that but for the

to debts payable winding up, would not be payable until a date that is more

after

commencement than six months after the commencement of the winding up,

of winding up. shall be treated for the purposes of this Part of this Act, as a

claim for the present value of the debt.

(2) For the purposes of subsection (1), the present value

of a debt shall be determined by deducting from the amount

of the debt, interest at the prescribe rate for the period from

the date of commencement of the winding up to the date

when the debt is due.

Mutual credit 363. (1) Where there have been mutual credits, mutual

and set-off. debts or other mutual dealing between a company and a

person who seeks or but for the operation of this section,

would seek to have a claim admitted in the winding up of the

company—

(a) an account shall be taken of what is due from one

party to the other in respect of those credits, debts,

or dealings;

(b) an amount due from one party shall be set-off against

an amount due from the other party; and

(c) only the balance of the account shall be claimed in

the winding up or be payable to the company, as the

case may be.

(2) This section shall not apply to an amount paid or

payable by a shareholder—

(a) as the consideration or part of the consideration for

the issue of a share; or

(b) in satisfaction of a call in respect of an outstanding

liability of the shareholder, made by the board or by

the liquidator.

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364. (1) The amount of a claim may include interest up Interest on

claims.

to the commencement of the winding up—

(a) at such rate as may be specified or contained in any

contract that makes provision for the payment of

interest on that amount; or

(b) in the case of a judgment debt, at such rate as is

payable on the judgment debt.

(2) If any surplus assets remain after the payment of all

admitted claims, interest shall be paid at the prescribed rate

on those claims from the date of commencement of the

winding up to the date on which each claim is paid. If the

amount of the surplus assets is insufficient to pay interest in

full on all claims, payment shall abate rateably among all

claims.

(3) If any surplus assets remain after the payment of interest

in accordance with subsection (2), interest shall be paid on

all admitted claims referred to in subsection (1), from the

commencement of the winding up to the date on which the

claim is paid, at the difference between the rate referred to in

paragraph (a) or paragraph (b) of that subsection, as the case

may be, and the prescribed rate. If the amount of the surplus

assets is insufficient to pay interest in full on all claims,

payment shall abate rateably among all claims.

365. (1) The liquidator shall pay out of the assets of the Preferential

company the expenses, fees, and claims set out in the Ninth claims.

Schedule to the extent and in the order of priority specified

in that Schedule and that Schedule shall apply to the payment

of those expenses, fees, and claims according to its tenor.

(2) Without limiting paragraph 7(b) of the Ninth Schedule,

the terms “assets” in subsection (1) shall not include assets

subject to a charge, unless—

(a) the charge is surrendered or taken to be surrendered

or redeemed under section 358; or

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(b) the charge was when created, a floating charge in

respect of those assets.

Claims of other 366. (1) After paying preferential claims in accordance

creditors and with section 365, the liquidator shall apply the assets of the

distribution of company in satisfaction of all other claims.

surplus assets.

(2) The claims referred to in subsection (1) shall rank

equally among themselves and shall be paid in full, unless

the assets are insufficient to meet them, in which case payment

shall abate rateably among all claims.

(3) Where before the commencement of the winding up,

a creditor agrees to accept a lower priority in respect of a debt

than that which it would otherwise have under this section,

nothing in this section shall prevent the agreement from

having effect according to its terms.

(4) Subject to section 364, after paying the claims referred

to in subsection (1), the liquidator shall distribute the

company’s surplus assets—

(a) in accordance with the provisions contained in the

company’s articles; or

(b) if the company’s articles do not contain provisions

for the distribution of surplus assets, in accordance

with the provisions of this Act.

(5) The provisions of the Tenth Schedule shall apply in

relation to the payment of claims referred to in

subsection (1).

VOIDABLE TRANSACTIONS

Transactions 367. (1) A transaction by a company is voidable on the

having application of the liquidator, if the transaction —

preferential

effect.

(a) took place—

(i) at a time when the company was unable to

pay its debts as they fell due; and

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(ii) within the specified period; and

(b) enabled another person to receive more towards

satisfaction of a debt than the person would otherwise

have received or be likely to have received in the

liquidation.

(2) Unless the contrary is proved, for the purposes of

subsection (1), a transaction that took place within the restricted

period is presumed to have been made at a time when the

company was unable to pay its debts as they fell due.

(3) A transaction with a person shall not be set aside under

this section, unless the company was influenced in entering

into the transaction by a desire to produce in relation to that

person, the effect mentioned in paragraph (b) of subsection(1).

(4) A company which has entered into a transaction with

any connected person is presumed, unless the contrary is

shown, to have been influenced by a desire to produce in

relation to that person, the effect mentioned in paragraph (b)

of subsection (1).

368. (1) A charge over any property or undertaking of a Voidable charge.

company is voidable on the application of the liquidator, if

the charge was given within the specified period, unless—

(a) the charge secures—

(i) money actually advanced or paid, or the actual

price or value of property sold or supplied to

the company, or any other valuable

consideration given in good faith by the

grantee of the charge at the time of, or at any

time after the giving of the charge; and

(ii) any interest payable on an amount referred

to in sub-paragraph (i);

(b) immediately after the charge was given, the company

was able to pay its debts as they fell due; or

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(c) the charge is in substitution for a charge given before

the specified period.

(2) Unless the contrary is proved, a company giving a

charge within the restricted period is presumed to have been

unable to pay its debts as they fell due immediately after

giving the charge.

(3) The provisions of paragraph (c) of subsection (1) shall

not apply to the extent that —

(a) the amount secured by the substituted charge

exceeds the amount secured by the existing charge;

or

(b) the value of the property subject to the substituted

charge at the date of the substitution, exceeds the

value of the property subject to the existing charge

at that date.

(4) Nothing in subsection (1) shall apply to a charge given

by a company that secures the unpaid purchase price of

property and any interest payable on that amount, whether or

not the charge is given over that property, if the instrument

creating the charge is executed not later than thirty days after

the sale of the property or in the case of the sale of an estate or

interest in land, not later than thirty days after the final

settlement of the sale.

(5) For the purposes of paragraph (a) of subsection (1)

and subsection (4), where any charge was given by the

company within the period specified in subsection (1), all

payments received by the grantee of the charge after it was

given shall be deemed to have been appropriated so far as

may be necessary—

(a) towards repayment of money actually advanced or

paid by the grantee to the company on or after the

giving of the charge;

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(b) towards payment of the actual price or value of

property sold by the grantee to the company on or

after the giving of the charge;

(c) towards payment of any other liability of the

company to the grantee in respect of any other

valuable consideration given in good faith on or

after the giving of the charge; or

(d) towards interest payable on any amount referred to

in paragraphs (a), (b) or (c).

369. (1) A transaction by a company is voidable on the Uncommercial

application of the liquidator, if — transactions.

(a) the transaction took place within the specified

period;

(b) the transaction was an uncommercial transaction;

(c) when the transaction took place, the company—

(i) was unable to pay its due debts;

(ii) was engaged or about to engage in business

for which its financial resources were grossly

inadequate; or

(iii) incurred an obligation knowing that the

company would not be able to perform the

obligation when required to do so.

(2) A transaction by a company is an “uncommercial

transaction” if, and only if, a reasonable person in the

company’s circumstances would not have entered into the

transaction having regard to—

(a) the benefits (if any) to the company of entering into

the transaction;

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(b) the detriment to the company of entering to the

transaction;

(c) the respective benefits to the other parties to the

transaction; and

(d) any other relevant matters.

(3) A transaction may be an uncommercial transaction

for the purposes of this section—

(a) whether or not a creditor of the company is a party

to the transaction; and

(b) even if the transaction is given effect to or is required

to be given effect to, because of an order made by a

court.

(4) Unless the contrary is proved for the purposes of

subsection (1), a transaction that took place within the

restricted period is presumed to have been made at a time

when the company was unable to pay its debts as they fell

due.

Procedure 370. (1) A liquidator who wishes to set aside a

for setting transaction that is voidable under section 367 or section 369

aside or a charge that is voidable under section 368 shall—

voidable

transactions

and charges. (a) file in the court a notice by way of a motion to that

effect specifying the transaction or charge to be set

aside and, in the case of a transaction, the property

or value which the liquidator whishes to recover,

and setting out the effect of subsections (2), (3) and

(4) of this section ; and

(b) serve a copy of the notice as filed in court under

paragraph (a), on the other party to the transaction

or the grantee of the charge and or every other person

from whom the liquidator wishes to recover the

property or value.

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(2) A person —

(a) who would be affected by the setting aside of the

transaction or charge specified in the notice; and

(b) who considers that the transaction or charge is not

voidable,

may apply to the court for an order that the transaction or

charge, be not set aside.

(3) Unless a person on whom the notice was served has

applied to the court under subsection (2), the transaction or

charge shall be deemed to be set aside on the twentieth

working day after the date of service of the notice.

(4) If one or more persons have applied to the court under

subsection (2), the transaction or charge shall be deemed to

be set aside on the day on which the last application is finally

determined, unless the court orders otherwise.

371. If a transaction or charge is set aside under section Other orders.

370, the court may make one or more of the following orders:–

(a) an order requiring a person to pay to the liquidator

in respect of benefits received by that person as a

result of the transaction or charge, such sums as

fairly represent those benefits;

(b) an order requiring property transferred to a person

as part of the transaction to be restored to the

company;

(c) an order requiring property to be vested in the

company if that property represents the application

either of the proceeds of sale of property or of money

so transferred;

(d) an order releasing in whole or in part a debt incurred

or a guarantee or charge given by the company;

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(e) an order declaring an agreement constituting,

forming part of or relating to the transaction or

charge or specified provisions of such an agreement,

to have been void at and after the time when the

agreement was made or at and after a specified later

time;

(f) an order varying such an agreement in the manner

specified in the order and if the court thinks fit,

declaring the agreement to have had effect as so

varied at and after the time when the agreement was

made or at and after a specified later time;

(g) an order declaring such an agreement or specified

provisions of such an agreement to be unenforceable;

(h) an order requiring security to be given for the

discharge of an order made under this section;

(i) an order specifying the extent to which a person

affected by the setting aside of a transaction or by

an order made under this section, is entitled to claim

as a creditor in the liquidation.

Additional 372. (1) The setting aside of a transaction or an order

provisions made under section 371 shall not affect the title or interest of

relating to

setting aside a person in property, which that person has acquired—

of

transactions (a) from a person other than the company;

and charges.

(b) for valuable consideration ; and

(c) in good faith.

(2) The setting aside of a charge or an order made under

section 371 shall not affect the title or interest of a person in

property which that person has acquired—

(a) as the result of the exercise of a power of sale by the

grantee of the charge;

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(b) for valuable consideration; and

(c) in good faith.

(3) Recovery by the liquidator of property or its

equivalent value, whether under section 371 or any other

section of this Act or under any other enactment or in equity

or otherwise, may be denied wholly or in part if—

(a) the person from whom recovery is sought received

the property in good faith and has altered his

position in the reasonably held belief that the

transfer to that person was validly made; and

(b) in the opinion of the court, it is inequitable to order

recovery or recovery in full.

373. (1) In sections 367 and 369 “transaction” in relation Interpretation in

to a company, includes— relation to

preferences &.

(a) a conveyance or transfer or any other disposition of

property by the company;

(b) the giving of a security or charge over the property

of the company;

(c) the incurring of an obligation by the company;

(d) the acceptance by the company of execution under

a judicial proceeding;

(e) the payment of money by the company including

the payment of money under a judgment or order of

a court.

(2) For the purposes of sections 367, 368 and 369

“specified period” means—

(a) in the case of a transaction entered into with or a

charge granted to a connected person—

(i) the period of two years before the

commencement of the winding up; and

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(ii) in the case of a company that is being wound

up by the court, the period of two years before

the filing of the petition in the court, together

with the period commencing on the date of

the filing of that petition and ending on the

date on which the order of the court was made;

(b) in any other case—

(i) the period of one year before the

commencement of the winding up; and

(ii) in the case of a company that is being wound

up by the court, the period of one year before

the filing of the petition in the court, together

with the period commencing on the date of

the filing of that petition and ending on the

date on which the order of the court was made.

(3) For purposes of subsection (4) and of section 367, a

person is a “connected person”, if that person is—

(a) a person who was at the time of the transaction, a

director of the company or a nominee or relative of

or a trustee for, or a trustee for a relative of, a director

of the company;

(b) a person or a relative of a person, who at the time of

the transaction, had control of the company;

(c) another company that was at the time of the

transaction, controlled by a director of the company

or a nominee or relative of or a trustee for, or a trustee

for a relative of, a director of the company;

(d) another company that was at the time of the

transaction, a related company.

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(4) For the purposes of sections 367, 368 and 369

“restricted period” means—

(a) the period of one moth before the commencement

of the winding up; and

(b) in the case of a company that is being wound up by

the court, the period of one month before the filing

of the petition in the court together with the period

commencing on the date of the filing of that petition

and ending on the date on which the order of the

court was made.

MALPRACTICE BEFORE WINDING UP AND LIABILITY OF OFFICERS

374. (1) When a company is wound up, a person who is Fraud &c. in

a past or present officer of the company is deemed to have anticipation of

winding up.

committed an offence if, within the two years preceding the

commencement of the winding up, he has—

(a) concealed any part of the company’s property to the

value of ten thousand rupees or more or concealed

any debt due to or from the company;

(b) fraudulently removed any part of the company’s

property to the value of ten thousand rupees or more;

(c) concealed, destroyed, mutilated or falsified any book

or document affecting or relating to the company’s

property or affairs;

(d) made any false entry in any book or document

affecting or relating to the company’s property or

affairs;

(e) fraudulently parted with, altered or made any

omission in any document affecting or relating to

the company’s property or affairs;

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(f) pawned, pledged or disposed of any property of the

company which has been obtained on credit and

has not been paid for, unless the pawning, pledging

or disposal was in the ordinary course of the

company’s business;

(g) 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 company’s property,

with the intent of defrauding the company’s

creditors; or

(h) concealed or removed any part of the company’s

property since or within two months before the date

of any unsatisfied judgment or order for the payment

of money obtained against the company, with the

intent of defrauding the company’s creditors.

(2) It is a defence—

(a) for a person charged under paragraph (a) or (f) of

subsection (1), to prove that he had no intent to

defraud;

(b) for a person charged under paragraph (c) or (d) of

subsection (1), to prove that he had no intent to

conceal the state of affairs of the company or to

defeat the law.

(3) A person who commits an offence under subsection

(1) shall be liable on conviction to a fine not exceeding one

million rupees or to imprisonment for a term not exceeding

five years or to both such fine and imprisonment.

Fraudulent 375. (1) Where any business of a company that has been

trading. wound up has been carried on with intent to defraud creditors

of the company or creditors of any other person or for any

fraudulent purpose, every person who was knowingly a party

to the carrying on of the business in that manner, shall be

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deemed to have committed an offence and shall be liable on

conviction to a fine not exceeding one million rupees or to

imprisonment for a term not exceeding five years or to both

such fine and imprisonment.

(2) Where in the course of the winding up of a company it

appears that any business of the company has been carried on

with intent to defraud creditors of the company or creditors of

any other person or for any fraudulent purpose, the court may,

on the application of the liquidator or any creditor of the

company, declare that any persons who were knowingly parties

to the carrying on of the business in that manner, shall be—

(a) liable to make such contribution to the company’s

assets; or

(b) personally responsible for such debts or other

liabilities of the company,

as the court may think fit.

376. (1) Where in the course of the winding up of a Power of court

company it appears to the court that a person who has taken to require

part in the formation or promotion of the company or a past persons to repay

money or return

or present director, manager, liquidator or receiver of the property.

company, has misapplied or retained or become liable or

accountable for money or property of the company, or been

guilty of negligence, default or breach of duty or trust in

relation to the company, the court may, on the application of

the liquidator or a creditor or shareholder—

(a) inquire into the conduct of the promoter, director,

manager, liquidator, or receiver; and

(b) order that person—

(i) to repay or restore the money or property or

any part of it with interest at a rate the court

thinks just; or

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(ii) to contribute such sum to the assets of the

company by way of compensation as the court

thinks just; or

(c) where the application is made by a creditor, order

that person to pay or transfer the money or property

or any part of it with interest at a rate the court thinks

just, to the creditor.

(2) The provisions of this section shall have effect even

though the conduct may constitute an offence under this

Act.

(3) Where an order for payment of money is made under

this section, it shall for the purposes of the Insolvency

Ordinance (Cap. 97), be deemed to be a judgment for the

recovery of a debt or money demand referred to in section 12

of that Ordinance.

Disclaimer of 377. (1) Where any part of the property of a company

onerous which is being wound up consists of land of any tenure

property.

burdened with onerous covenants of shares or stock in

companies, unprofitable contracts or of any other property

that is unsaleable or not readily saleable, by reason of its

binding the possessor thereof to the performance of any

onerous act, or to the payment of any sum of money, the

liquidator of the company, notwithstanding that he has

endeavoured to sell or has taken possession of the property,

or exercised any act of ownership in relation thereto, may,

with the leave of the court and subject to the provisions of

this section, by writing signed by him at any time within

twelve months from the date of commencement of the winding

up or such extended period as may be allowed by the court,

disclaim the property:

Provided that, where any such property has not come to

the knowledge of the liquidator within one month from the

date of commencement of the winding up, the power of

disclaiming the property under the provisions of this section

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may be exercised at any time within twelve months from the

date he has become aware thereof, or such extended period as

may be allowed by the court.

(2) The disclaimer shall operate to determine as from the

date of the disclaimer, the rights, interest, and liabilities of

the company and the property of the company, in or in respect

of the property disclaimed, but shall not, except so far as is

necessary for the purpose of releasing the company and the

property of the company from liability, affect the rights or

liabilities of any other person.

(3) The court before or on granting leave to disclaim,

may require such notices to be given to persons interested

and impose such terms as a condition of granting such leave

and make such other order in the matter, as the court thinks

just.

(4) The liquidator shall not be entitled to disclaim any

property under the provisions of this section, in any case

where an application in writing has been made to him by any

person interested in the property requiring him to decide

whether he will or will not disclaim, and the liquidator has

not, within a period of twenty-eight days from the date of

receipt of the application or such further period as may be

allowed by the court, given notice to the applicant that he

intends to make an application to the court for leave to

disclaim, and in the case of a contract, where the liquidator

upon receipt of an application as aforesaid, does not within

the said period or further period, disclaim the contract, the

company shall be deemed to have adopted it.

(5) The court may on the application of any person, who

is, as against the liquidator, entitled to the benefit or subject

to the burden of a contract made with the company, make an

order rescinding the contract on such terms as to payment by

or to either party of damages for the non performance of the

contract, or otherwise as the court thinks just, and any

damages payable under such order to any such person may

be proved by him as a debt in the winding up.

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(6) The court may, on an application by any person who

either claims any interest in any disclaimed property or is

under any liability not discharged by this Act in respect of

any disclaimed property and on hearing any such person as it

thinks fit, make an order for the vesting of the property in or

the delivery of the property to any persons entitled thereto,

or to whom it may seem just that the property should be

delivered by way of compensation for such liability as

aforesaid or a trustee for him, and on such terms as the court

thinks just, and on any such vesting order being made, the

property comprised therein shall vest accordingly in the

person therein named in that behalf without any conveyance

or assignment for the purpose:

Provided that, where the property disclaimed is of a

leasehold nature, the court shall not make a vesting order in

favour of any person claiming under the company, whether

as sub-lessee or as mortgagee, except upon the terms of making

that person—

(a) subject to the same liabilities and obligations as

those to which the company was subject under the

lease in respect of the property at the date of

commencement of the winding up; or

(b) where the court thinks fit, subject only to the same

liabilities and obligations, as if the lease had been

assigned to that person at that date,

and in either event (if the case so requires) as if the lease had

comprised only the property comprised in the vesting order,

and any sub-lessee or mortgagee declining to accept a vesting

order upon such terms shall be excluded from all interest in

and security upon, the property, and where there is no person

claiming under the company who is willing to accept an

order upon such terms, the court shall have power to vest the

estate and interest of the company in the property in any

person liable either personally or in a representative character,

and either by himself or jointly with the company to perform

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the lessor’s convenants in the lease, freed and discharged

from all estates, encumbrances and interests created therein

by the company.

(7) Any person injured by the operation of a disclaimer

under the provisions of this section shall be deemed to be a

creditor of the company to the amount of the injury, and may

accordingly prove the amount as a debt in the winding up.

378. (1) Where a creditor has issued execution against Restriction of

the goods or lands of a company or has attached any debt due rights of creditor

as to execution

to the company and the company is subsequently wound up,

or attachment in

he shall not be entitled to retain the benefit of the execution case of company.

of the company, unless he has completed the execution or

attachment before the date of commencement of the winding

up:

Provided that—

(a) where any creditor has had notice of a meeting

having been called at which a resolution for

voluntary winding up is to be proposed, the date on

which the creditor so had notice shall for the

purposes of the preceding provisions, be substituted

for the date of commencement of the winding up;

(b) a person who purchases in good faith under a sale

by order of court any goods of a company on which

an execution has been levied, shall in all cases

acquire a good title to them against the liquidator;

(c) the rights conferred by the provisions of this

subsection on the liquidator may be set aside by the

court in favour of the creditor, to such extent and

subject to such terms as the court may think fit.

(2) For the purposes of this section, an execution against

goods shall be taken to be completed by seizure and sale,

and an attachment of a debt shall be deemed to be completed

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by receipt of the debts, and an execution against land shall

be deemed to be completed by seizure, and in the case of an

equitable interest, by the appointment of a receiver.

(3) In this section the expression “goods” includes all

movable property.

(4) Nothing this section shall apply to an execution

process or attachment against any property by or for the

benefit of a creditor, who is entitled to a charge in respect of

that property.

Duty of fiscal as 379. (1) Subject to the provisions of subsection (3),

to goods taken in where any goods of a company are taken in execution and

execution.

before the sale thereof or the completion of the execution, by

receipt or recovery of the full amount of the levy, notice is

served on the Fiscal that a provisional liquidator has been

appointed or that a winding up order has been made or that a

resolution for voluntary winding up has been passed, the

Fiscal shall on being so required, deliver the goods and any

money seized or received in part satisfaction of the execution

to the liquidator, but the costs of the execution shall be a first

charge on the goods or money so delivered, and the liquidator

may sell the goods or a sufficient part thereof for the purpose

of satisfying that charge.

(2) Subject to the provisions of subsection (3), where

under an execution in respect of a judgment for a sum

exceeding two hundred and fifty rupees, the goods of a

company are sold or money is paid in order to avoid the sale,

the Fiscal shall deduct the costs of the execution from the

proceeds of the sale or the money paid and retain the balance

for fourteen days, and if within that time notice is served on

him of a petition for the winding up of the company having

been presented or of a meeting having been called at which

there is to be proposed a resolution for voluntary winding up

of the company and an order is made or a resolution is passed,

as the case may be, for the winding up of the company, the

Fiscal shall pay the balance to the liquidator who shall be

entitled to retain it as against the execution creditor.

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(3) The rights conferred by the provisions of this section

on the liquidator may be set aside by the court in favour of

the creditor, to such extent and subject to such terms as the

court may think fit.

(4) In this section the expression “goods” includes all

movable property and the expression “Fiscal” includes any

officer charged with the execution of a writ or other process.

(5) Nothing in this section shall apply to an execution

process or attachment against any property by or for the

benefit of a creditor, who is entitled to a charge in respect of

that property.

OFFENCESANTECEDENT TO OR IN THE COURSE OFWINDING UP

380. (1) Where any person being a past or present officer Offences by

of a company which at the time of the commission of the officers of

companies in

alleged offence is being wound up whether by or under the

liquidation.

supervision of the court or voluntarily, or is subsequently

ordered to be wound up by the court or subsequently passes

a resolution for voluntary winding up—

(a) does not to the best of his knowledge and belief

fully and truly make known to the liquidator all the

property, movable and immovable, of the company,

and how and to whom and for what consideration

and when the company disposed of any part thereof,

except such part as has been disposed of in the

ordinary course of the business of the company;

(b) does not deliver to the liquidator or as he directs, all

such part of the movable and immovable property

of the company as in his custody or under his control,

and which he is required by law to deliver;

(c) does not deliver to the liquidator or as he directs, all

books and papers in his custody or under his control

belonging to the company and which he is required

by law to deliver;

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(d) makes any material omission in any statement

relating to the affairs of the company;

(e) knowing or believing that a false debt has been

proved by any person under the winding up, fails

for the period of one month to inform the liquidator

thereof;

(f) after the date of commencement of the winding up,

prevents the production of any book or paper

affecting or relating to the property or affairs of the

company;

(g) after the date of commencement of the winding up

or at any meeting of the creditors of the company

within the twelve months immediately prior to the

date of commencement of the winding up, attempts

to account for any part of the property of the

company by fictious losses or expenses;

(h) has within the twelve months immediately prior to

the date of commencement of the winding up or at

any time thereafter, by any false representation or

other fraud, obtained any property for or on behalf

of the company on credit which the company does

not subsequently pay for;

(i) within the twelve months immediately prior to the

date of commencement of the winding up or at any

time thereafter, under the false pretense that the

company is carrying on its business, obtains on credit

for or on behalf of the company, any property which

the company does not subsequently pay for; or

(j) is guilty of any false representation or other fraud

for the purpose of obtaining the consent of the

creditors of the company or any of them, to an

agreement with reference to the affairs of the

company or to the winding up,

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shall be guilty of an offence and shall on conviction, in the

case of the offences referred to in paragraphs (h), (i) and (j), be

liable to a fine not exceeding one million rupees or to

imprisonment for a term not exceeding five years or to both

such fine and imprisonment, and in the case of any other

offence under the provisions of this subsection, be liable to a

fine not exceeding five hundred thousand rupees or to

imprisonment for a term not exceeding two years or to both

such fine and imprisonment:

Provided that it shall be a good defence to a charge under

the provisions of paragraphs (a), (b), (c), (d) and (i), for the

accused to prove that he had no intent to defraud, and to a

charge under the provisions of paragraph (f), to prove that he

had no intent to conceal the state of affairs of the company or

to defeat the law.

(2) For the purposes of this section, the expression

“officer” shall include any person in accordance with whose

directions or instructions the directors of a company have

been accustomed to act.

381. (1) Where in the course of winding up of a Liability where

company it is shown that proper books of accounts were not proper accounts

are not kept.

kept by the company throughout the period of two years

immediately preceding the date of commencement of the

winding up, or the period between the incorporation of the

company and the date of commencement of the winding up,

whichever is the shorter, every officer of the company who is

in default shall, unless he shows that he acted honestly and

that in the circumstances in which the business of the company

was carried on the default was inevitable, be guilty of an

offence and shall be liable on conviction to a fine not

exceeding one hundred thousand rupees.

(2) For the purposes of this section, proper books of

accounts shall be deemed not to have been kept in the case of

any company, if there have not been kept such books or

accounts as are necessary to exhibit and explain the

transactions and financial position of the trade or business of

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the company, including books containing entries from day

to day in sufficient detail of all cash received and cash paid,

and where the trade or business has involved dealing in goods,

statement or annual stock-takings and (except in the case of

goods sold by way of ordinary retail trade) of all goods sold

and purchased, showing the goods and the buyers and sellers

thereof in sufficient detail to enable those goods and those

buyers and sellers to be identified.

Prosecution of 382. (1) Where it appears to the court in the course of a

delinquent winding up by or subject to the supervision of the court, that

officers and

any past or present officer or any shareholder of the company

members of the

company. has been guilty of any offence in relation to the company for

which he is criminally liable, the court may, either on the

application of any person interested in the winding up or of

its own motion, direct the liquidator either himself to

prosecute the offender or to refer the matter to the Attorney-

General.

(2) Where it appears to the liquidator in the course of a

voluntary winding up that any past or present office or any

shareholder of the company has been guilty of any offence in

relation to the company for which he is criminally liable, he

shall forthwith report the matter to the Attorney-General and

shall furnish to him such information and give to him such

access to and facilities for inspecting and taking copies of

any documents, being information or documents in

possession or under the control of the liquidator and relating

to the matter in question, as he may require.

(3) Where any report is made under the provisions of

subsection (2) to the Attorney-General, he may if he thinks

fit, refer the matter to the Registrar for inquiry, and the Registrar

shall thereupon investigate the matter and may where he

thinks it expedient, make an application to court for an order

conferring on him or any person designated by him for the

purpose with respect to the company concerned, all such

powers of investigating the affairs of the company as are

provided by this Act in the case of a winding up the court.

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(4) Where on any report to the Attorney-General under

the provisions of subsection (2), it appears to the Attorney-

General that the case is not one in which proceedings ought

to be taken by him, he shall inform the liquidator accordingly

and thereupon, subject to the previous sanction of the court,

the liquidator may himself take proceedings against the

offender.

(5) Where it appears to the court in the course of voluntary

winding up that any past or present officer or any shareholder

of the company has been guilty as aforesaid, and that no

report with respect to the matter has been made by the

liquidator to the Attorney-General under the provisions of

subsection (2), the court may, on the application of any person

interested in the winding up or of its own motion, direct the

liquidator to make such report, and on a report being made

accordingly, the provisions of this section shall have effect

as though the report has been made in pursuance of the

provision of subsection (2).

(6) If where any matter is reported or referred to the

Attorney-General under the provisions of this section, the

Attorney-General considers that the case is one in which a

prosecution ought to be instituted, he shall institute

proceedings accordingly, and it shall be the duty of the

liquidator and of every officer and agent of the company past

and present (other than the accused in the proceedings) to

give him all assistance in connection with the prosecution

which he is reasonably able to give.

For the purposes of this subsection, the expression “agent”

in relation to a company shall be deemed to include any

banker or attorney-at-law of the company and any person

employed by the company as auditor, whether that person is

or is not an officer of the company.

(7) Where any person fails or neglects to give assistance

in the manner required by subsection (6), the court may on

the application of the Attorney-General, direct that person to

comply with the requirements of the said subsection, and

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where any such application is made with respect to a

liquidator, the court may, unless it appears that the failure or

neglect to comply was due to the liquidator not having in his

hands sufficient assets of the company to enable him so to

do, direct that the costs of the application shall be borne by

the liquidator personally.

SUPPLEMENTARY PROVISIONS AS TO WINDING UP

Qualifications 383. (1) None of the following persons may be

of appointed or act as a liquidator of a company :—

liquidators.

(a) a person below eighteen years of age;

(b) a creditor of the company in liquidation;

(c) a person who has within the two years immediately

preceding the commencement of the winding up,

been a shareholder, director, auditor, or receiver of

the company or of a related company;

(d) an undischarged bankrupt;

(e) a person who has been adjudged to be of unsound

mind under the provision of the Mental Diseases

Ordinance (Cap. 227);

(f) a person in respect of whom an order has been made

under section 468;

(g) a person who is prohibited from being a director or

promoter of or being concerned or taking part in the

management of a company under section 186 of the

Companies Act, No. 17 of 1982, or who would be so

prohibited, but for the repeal of that Act; or

(h) a person who is prohibited from being a director or

promoter of or being concerned or taking part in the

management of a company under section 213 or

214.

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(2) A body corporate shall not be appointed or act as a

liquidator.

(3) Every person who acts in contravention of the

provisions of subsection (1) or subsection (2) shall be guilty

of an offence and be liable on conviction to a fine not

exceeding two hundred thousand rupees.

384. Any person who gives or agrees or offers to give to Corrupt

any shareholder or creditor of a company any valuable inducement

affecting

consideration with a view to securing his own appointment appointment as

or nomination or to securing or preventing the appointment liquidator.

or nomination of some person other than himself as the

company’s liquidator, shall be guilty of an offence and be

liable on conviction to a fine not exceeding two hundred

thousand rupees.

385. (1) Where any liquidator, who has made any Enforcement of

default in filing, delivering or making any account, document duty of

liquidator to

or return, as the case may be, or in giving any notice which he make returns,

is by law required to file, deliver, make or give, fails to make &c.,

good the default within ten working days from the date of

service on him of a notice requiring him to do so, the court

may on an application made to the court by any contributory

or creditor of the company or by the Registrar, make an order

directing the liquidator to make good the default within such

time as may be specified in the order.

(2) Any order made under the provisions of subsection

(1), may provide that all costs of and incidental to the

application shall be borne by the liquidator.

(3) Nothing in this section shall be taken to prejudice the

operation of any written law imposing penalties on a

liquidator in respect of any such default as is referred to in

subsection (1).

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Notification that 386. (1) Where a company is being wound up, whether

a company is in by or under the supervision of the court or voluntary, every

liquidation.

invoice, order for goods or business letter issued by or on behalf

of the company or a liquidator of the company or a receiver or

manager of the property of the company, being a document on

or in which the name of the company appears, shall contain a

statement that the company is being wound up.

(2) Where default is made in complying with the

provisions of this section, the company and any of the

following persons who knowingly and willfully authorises

or permits the default, namely, any officer of the company,

any liquidator of the company and any receiver or manager

shall be guilty of an offence and be liable on conviction to a

fine not exceeding fifty thousand rupees.

Exemption of 387. In the case of a winding up by the court or of a

certain creditors’ voluntary winding up of a company—

documents from

stamp duty on

winding up of (a) every deed relating solely to movable or immovable

companies. property or creating any mortgage, charge or other

encumbrance on, or any estate, right or interest in

any such property which forms part of the assets of

the company and which, after the execution of the

deed, is or remains part of the assets of the company;

and

(b) every power of attorney, proxy paper, writ, order,

certificate, affidavit, bond or other instrument of

writing relating solely to the property of any

company which is being so wound up or to any

proceeding under any such winding up,

shall be exempt form stamp duty.

Books of 388. Where a company is being wound up, all books

company to be and papers of the company and of the liquidators shall, as

evidence.

between contributories of the company, be prima facie

evidence of the truth of all matters purporting to be there in

recorded.

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389. (1) Where a company has been wound up and is Disposal of

books and

about to be dissolved, the books of the company and of the

papers of the

liquidators may be disposed of as follows, that is to say— company.

(a) in the case of a winding up by or subject to the

supervision of the court, in such a way as the court

directs;

(b) in the case of a shareholders’ voluntary winding up,

in such a way as the company by special resolution

directs, and in the case of a creditors’ voluntary

winding up, in such a way as the committee of

inspection or where there is no such committee, as

the creditors of the company may direct.

(2) After five years from the date of dissolution of the

company no responsibility shall rest on the company, the

liquidators, or any person to whom the custody of the books

and papers has been committed, by reason of any book or

paper not being forthcoming to any person claiming to be

interested therein.

(3) Rules may be made for enabling the Registrar to

prevent, for such period (not exceeding five years from the

date of dissolution of the company) as he thinks fit, the

destruction of the books and papers of a company which has

been wound up, and for enabling any creditor or contributory

of the company to make representations to the Registrar and

to appeal to the Court of Appeal from any direction which

may be given by the Registrar in the matter.

(4) Where any person acts in contravention of any rule

made under the provisions of subsection (3) or of any direction

of the Registrar thereunder, he shall be guilty of an offence

and shall be liable on conviction to a fine not exceeding two

hundred thousand rupees.

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Information as to 390. (1) Where the winding up of a company is not

pending

concluded within one year from the date of its

liquidation.

commencement, the liquidator shall at such intervals as may

be prescribed, until the winding up is concluded, send to the

Registrar a statement in the prescribed form and containing

the prescribed particulars with respect to the proceedings in

and position of the liquidation.

(2) Where a liquidator fails to comply with the provisions

of this section, he shall be guilty of an offence and be liable

on conviction to a fine not exceeding fifty thousand rupees.

Resolutions 391. Where a resolution is passed at an adjourned

passed at meeting of any creditors or contributories of a company, the

adjourned

meetings of resolution shall for all purposes be treated as having been

creditors and passed on the date on which it was in fact passed, and shall

contributories. not be deemed to have been passed on any earlier date.

SUPPLEMENTARY POWERS OF COURT

Meetings to 392. (1) The court may as to all matters relating to the

ascertain wishes winding up of a company, have regard to the wishes of the

of creditors or

creditors or contributories of the company as proved to it by

contributories.

any sufficient evidence, and may if it thinks fit for the purpose

of ascertaining those wishes, direct meetings of the creditors

or contributories to be called, held, and conducted in such

manner as the court directs, and may appoint a person to act

as chairman of any such meeting and to report the result

thereof to the court.

(2) In the case of creditors, regard shall be had to the

value of each creditor’s debt.

(3) In the case of contributories, regard shall be had to the

number of votes conferred on each contributory by this Act

or the company’s articles.

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PROVISIONS AS TO DISSOLUTION

393. (1) Where a company has been dissolved, the court Power of court

to declare

may at any time within two years from the date of the

dissolution of

dissolution on an application being made for the purpose by company void.

the liquidator of the company, or by any other person who

appears to the court to be interested, make an order upon

such terms as the court thinks fit, declaring the dissolution to

have been void, and thereupon such proceedings may be

taken as might have been taken if the company had not been

dissolved.

(2) It shall be the duty of the person on whose application

the order under the provisions of subsection (1) was made,

within seven days from the date of the order or such further

time as the court may allow, to deliver to the Registrar for

registration a certified copy of such order, and where such

person fails to do so he shall be guilty of an offence and shall

be liable on conviction to a fine not exceeding fifty thousand

rupees.

394. (1) Where the Registrar has reasonable cause to Registrar may

believe that a company is not carrying on business or is in strike off defunct

company from

operation, he may send to the company by post a letter register.

inquiring whether the company is carrying on business or is

in operation.

(2) Where the Registrar does not within one month of the

date of sending the letter referred to in subsection (1) receive

any answer thereto, he shall within ten working days from

the date of expiry of the said period of one month, send to the

company a letter by registered post referring to the first letter,

and stating that no answer thereto has been received, and

that if an answer is not received to the second letter within

one month from the date thereof, a notice will be published

in the Gazette with a view to striking off the name of the

company from the register.

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(3) Where the Registrar under the provisions of subsection

(2), either receives an answer to the effect that the company is

not carrying on business or in operation, or does not within

one month after sending the second letter receive an answer,

he may publish in the Gazette, and send to the company by

post, a notice that at the expiration of three months from the

date of that notice the name of the company specified therein

will, unless cause is shown to the contrary, be stuck off the

register and be dissolved.

(4) Where in the winding up of a company the Registrar

has reasonable cause to believe either that no liquidator is

acting, or that the affairs of the company are fully wound up,

and the returns required to be made by the liquidator under

the provisions of this Act have not been made for a period of

six consecutive months, the Registrar shall publish in the

Gazette and send to the company or the liquidator, if any, a

notice as is referred to in subsection (3).

(5) Upon the expiration of the period specified in the notice

given under the provisions of subsection (4), the Registrar

may, unless cause to the contrary is previously shown by the

company, strike off the name of the company form the register,

and shall publish notice thereof in the Gazette, and upon

such publication the company shall be dissolved:

Provided that—

(a) the liability, if any, of every director, manager and

shareholder of the company shall continue and may

be enforced as if the company had not been

dissolved; and

(b) nothing in the provisions of this subsection shall

affect the power of the court to wind up a company

the name of which has been struck off the register.

(6) Where a company or any shareholder or creditor

thereof is aggrieved by the company having been struck off

the register, the court on an application made by the company

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or shareholder or creditor, as the case may be, before the

expiration of five years from the publication in the Gazette

of the notice referred to in subsection (5) may, if satisfied,

that the company was at the time of the striking off carrying

on business or in operation, or otherwise that it is just that the

name of the company should be restored to the register, order

the name of the company to be restored to the register, and

upon a certified copy of the order being delivered to the

Registrar for registration, the company shall be deemed to

have continued in existence as if its name had not been struck

off the register, and the court may by such order give such

directions and make such provisions as to it seems just for

placing the company and all other persons in the same

position as nearly as may be, as if the name of the company

had not been struck off the register.

(7) A notice to be sent under the provisions of this section

to a liquidator may be addressed to the liquidator at his last

known place of business, and a letter or notice to be sent

under the provisions of this section to a company may be

addressed to the company at its registered office, or where no

office has been registered, to the care of some officer of the

company at the most recent address recorded for that person

in the annual returns or any other documents sent to the

Registrar by the company.

395. Where a company is dissolved, all property and Property of

rights whatsover vested in or held on trust for the company dissolved

company to vest

immediately before the date of its dissolution (including

in the State.

leasehold property but not including property held by the

company on trust for any other person) shall, subject to and

without prejudice to any order which may at any time be

made by the court under the provisions of sections 393 and

394, vest in and be at the disposal of the State.

COMPANIESLIQUIDATIONACCOUNT

396. (1) An Account to be called the Companies Establishment of

Liquidation Account, shall be kept by the Registrar with Companies

such bank as may from time to time be approved by the Liquation

Account.

Minister in charge of the subject of Finance.

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(2) Whenever the balance standing to the credit of the

Companies Liquidation Account is in the opinion of the

Registrar, in excess of the amount required for the time being

to meet claims under section 397, the Registrar shall notify

the Deputy Secretary to the Treasury of the excess and shall

pay to him, to such account as he may direct, the whole or

any part of that excess which he may require. The Deputy

Secretary to the Treasury may invest the sums paid to him or

any part of them in Government securities, to be held to the

credit of the Companies Liquidation Account.

(3) When any part of the money paid to the Deputy

Secretary to the Treasury under subsection (2) is in the

opinion of the Registrar, required to meet any claim under

section 397, the Registrar shall give notice of that requirement

to the Deputy Secretaty to the Treasury who shall repay the

amount required to the Registrar to the credit of the

Companies Liquidation Account, and may for that purpose

sell any of the securities referred to in subsection (2).

(4) The dividends on investments made under this section

shall be paid into the Companies Liquidation Account.

Payments into 397. (1) Money representing unclaimed assets of a

and out of company standing to the credit of a liquidator shall after

Companies

completion of the winding up, be paid to the Registrar to be

Liquidation

Account. credited to the Companies Liquidation Account.

(2) Money held in the Companies Liquidation Account

may be paid or distributed to any person who would have

been entitled to payment or distribution in the winding up of

a company of any money or surplus assets the proceeds of

which, have been credited to the Companies Liquidation

Account.

(3) Where any funds have been paid into the Companies

Liquidation Account in respect of any company, and that

company subsequently is dissolved, the provisions of section

395 shall apply to those funds.

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398. (1) For the purposes of this section, an “essential Refusal to supply

essential services

service” means—

prohibited.

(a) the retail supply of electricity ;

(b) the supply of water ; and

(c) the supply of telecommunications services.

(2) Notwithstanding the provisions contained in any

written law to the contrary or any contract, a supplier of an

essential service shall not—

(a) refuse to supply the service to a liquidator or to a

company in liquidation, by reason of the company’s

default in paying charges due for the service in

relation to a period before the commencement of

the liquidation ; or

(b) make it a condition of the supply of the service to a

liquidator or to a company in liquidation, that

payment be made of outstanding charges due for

the service, in relation to a period before the

commencement of the liquidation.

(3) For the avoidance of doubt, nothing in this section

shall prevent the supplier of an essential service from

exercising any right or power under any contract or under

any written law in respect of a failure by a company to pay

charges due for the service, in relation to any period after the

commencement of the liquidation.

(4) The charges incurred by a liquidator for the supply of

an essential service shall be an expense incurred by the

liquidator, for the purposes of sub-paragraph (a) of paragraph

1 of the Ninth Schedule to this Act.

300 Companies Act, No. 07 of 2007

RULES AND FEES

Rules and fees 399. (1) Rules may be made by the Minister to provide

for winding up.

for the carrying into effect of the objects of this Act, so far as

it relates to the winding up of companies.

(2) There shall be paid in respect of proceedings under

this Act in relation to the winding up of companies, such

reasonable fees as the Minister may, by regulation, prescribe.

PART XIII

ADMINISTRATORS

APPOINTMENT OF ADMINISTRATOR

Interpretation. 400. In this Part of this Act, unless the context otherwise

requires —

(a) “initial period” means the period beginning from

the date of appointment of the administrator, until—

(i) the date on which a meeting is held under

section 404 ; or

(ii) a receiver is appointed in accordance with

the provisions of subsection (2) of section

402 ; or

(iii) the expiry of twenty working days, or such

longer period as court may allow,

whichever occurs first ; and

(b) references to hire-purchase agreements include

conditional sale agreements, chattel leasing

arrangements and retention of title agreements.

Companies Act, No. 07 of 2007 301

401. (1) Subject to the provisions of subsection (4) of Power of board

to appoint

this section, where the board of a company considers that—

administrator.

(a) the company is or is likely to become unable to pay

its debts as they fall due ; and

(b) the appointment of an administrator will be likely

to achieve one or more of the purposes referred to in

subsection (2),

the board may resolve to appoint an administrator of a

company.

(2) The purposes for which an administrator may be

appointed are —

(a) the survival of the company and the whole or any

part of its undertaking as a viable concern ;

(b) the preparation and approval of a compromise under

Part IX or a compromise or arrangement under

Part X ; or

(c) a more advantageous realisation of the company’s

assets than would be likely on a winding up.

(3) A resolution appointing an administrator shall specify

the purpose or purposes for which the appointment is being

made, and once passed may not be rescinded without the

leave of the court.

(4) A resolution shall not be passed by the board under

this section where—

(a) an order has been made for the winding up of the

company ;

(b) a receiver has been appointed in respect of the whole

of the property and undertaking of the company,

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unless the person by whom or on whose behalf the

receiver was appointed has consented to the making

of the order ; or

(c) an administrator has been appointed by the company

on a previous occasion, unless the leave of the court

to make the further appointment is first obtained.

(5) A resolution passed in contravention of subsection

(4) shall be void and of no effect.

Notice to charge 402. (1) Where the board of a company appoints an

holders of administrator, the company shall forthwith give notice of the

appointment of

administrator. appointment and of the identity of the person who has been

appointed as administrator, to any person who is entitled to

appoint a receiver of the property and undertaking of the

company.

(2) At any time within ten working days from the date on

which notice has been given under subsection (1), a person

who is entitled to appoint a receiver of the property and

undertaking of the company may make such an appointment.

Upon the appointment of such a receiver, the administrator

shall immediately cease to hold office.

Effect of 403. (1) From and after the appointment of an

appointment of administrator, until the end of the initial period—

administrator.

(a) no resolution may be passed or order made for the

liquidation of the company ;

(b) subject to the provisions of subsection (2) of section

402, no steps be taken to enforce any security over

any property of the company or to repossess any

goods in the company’s use or possession under

any hire-purchase agreement, except with the

consent of the administrator or with the leave of the

court and subject to such terms as the court may

impose ;

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(c) no other proceedings and no execution or other legal

process may be commenced or continued and no

distress may be levied against the company or its

property, except with the consent of the

administrator or with the leave of the court and

subject to such terms as the court may impose.

(2) Nothing in subsection (1) requires the leave of the

court, for—

(a) filing a petition to wind up the company ; or

(b) giving notice in relation to a default under a charge

over property of the company or under an agreement

relating to property in the use, possession or

occupation of the company.

INITIAL MEETING AND CONFIRMATION OF APPOINTMENT

404. (1) An administrator shall within ten working days Duty of

of being appointed, send a written notice to all creditors of administrator to

summon initial

the company so far as he is aware of their addresses— meeting.

(a) advising them of the appointment of an

administrator ; and

(b) calling a meeting of creditors to consider whether

the appointment should be confirmed.

(2) Where no meeting of creditors is held before the expiry

of the initial period, the administrator shall cease to hold

office at the expiry of that period.

(3) A meeting of creditors called under this section shall

be conducted in accordance with the procedures specified in

the Seventh Schedule, save that all creditors shall vote as

one class.

304 Companies Act, No. 07 of 2007

(4) Where a meeting of creditors under this section does

not confirm the appointment of the administrator, the

administrator shall cease to hold office with effect from the

close of the meeting.

(5) Where a meeting of creditors under this section

confirms the appointment of the administrator, the

administrator shall continue in office and shall prepare

proposals in accrodance with the provisions of section 406.

Effect of 405. (1) During the period for which an administrator

confirmation holds office after the expiry of the initial period—

of

administrator.

(a) no resolution may be passed or order made for the

winding up of the company ;

(b) no receiver of the property of the company may be

appointed ;

(c) no other steps may be taken to enforce any security

over any property of the company or to re-possess

any goods in the company’s use or possession under

any hire-purchase agreement, except with—

(i) the consent of the administrator ; or

(ii) the leave of the court and subject to such

terms as the court may impose ;

(d) no other proceedings and no execution or other legal

process may be commenced or continued and no

distress may be levied against the company or its

property, except with—

(i) the consent of the administrator ; or

(ii) the leave of the court and subject to such

terms as the court may impose ;

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(2) Nothing in subsection (1) requires the consent of the

administrator or the leave of the court for—

(a) filing a petition to wind up the company ; or

(b) giving notice in relation to a default under a charge

over property of the company or under an agreement

relating to property in the use, possession, or

occupation of the company.

ADMINISTRATOR’S PROPOSALS

406. (1) Within two months after the end of the initial Statement of

period or such longer period as the court may allow, the proposals.

administrator shall—

(a) prepare a statement of his proposals for achieving

the purpose or purposes specified in the order

appointing him ;

(b) deliver a copy of the statement to the Registrar ;

(c) send a copy of the statement to all creditors of the

company so far as he is aware of their addresses.

(2) The administrator shall call a meeting of creditors to

consider the statement, not less than five and not more than

ten working days after the date on which copies of the

statement had been sent to creditors.

(3) The administrator shall also within two months of the

date of his appointment and before the date of the meeting of

creditors to consider the statement, either—

(a) send a copy of the statement to all shareholders of

the company ; or

(b) give public notice of an address at which

shareholders of the company can obtain a copy of

the statement free of charge.

306 Companies Act, No. 07 of 2007

(4) Where an administrator fails to comply with the

requirements of this section he shall be guilty of an offence

and be liable on conviction to a fine not exceeding fifty

thousand rupees.

Consideration of 407. (1) A meeting of creditors called under the

proposals by provisions of section 406 shall decide whether to approve

creditors’ the administrator’s proposals.

meeting.

(2) The meeting may approve the proposals with

modifications, if the administrator consents to the

modifications.

(3) The meeting shall be conducted in accordance with

the procedure specified in the Seventh Schedule and within

ten working days of such meeting the administrator shall

give notice of the result to the Registrar.

(4) Where the admininstrator’s proposals are approved,

the administrator shall continue in office if the proposals so

provide or shall cease to hold office in the circumstances set

out in the proposals.

(5) Where the administrator’s proposals are not approved,

the administrator shall cease to hold office five working days

after the date of the meeting.

(6) Where the administrator fails to comply with the

requirements of subsection (4) he shall be guilty of an offence

and be liable on conviction to a fine not exceeding fifty

thousand rupees.

Consequential 408. The court may on the application of a company or

orders where an administrator or former administrator, make such orders

administrator consequential upon the discharge of an administrator as it

cease to hold

office. thinks fit.

Approval of 409. (1) Where—

substantial

revisions to (a) the proposals of the administrator have been

proposals.

approved under section 407 ; and

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(b) the administrator proposes to make substantial

revisions to those proposals,

the administrator shall send to all creditors of the company

so far as he is aware of their addresses, a written statement of

the proposed revisions.

(2) The administrator shall call a meeting of the creditors

to consider the revisions, not less than five and not more than

ten working days after the date on which copies of the

statement had been sent to the creditors.

(3) The administrator shall also before the date of the

scheduled meeting of the creditors to consider the statement,

either—

(a) send a copy of the statement to all shareholders of

the company ; or

(b) give public notice of an address at which

shareholders of the company can obtain a copy of

the statement free of charge.

(4) The meeting may approve the proposed revisions with

modifications, if the administrator consents to the

modifications.

(5) The meeting shall be conducted in accordance with

the procedure specified in the Seventh Schedule, and at the

conclusion of such meeting the administrator shall give notice

of the result of the meeting to the Registrar.

NOTICE OFADMINISTRATION

410. (1) An administrator shall forthwith after being Notice of

appointed— appointment of

administrator.

(a) give public notice of his appointment, including—

(i) his full name ;

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(ii) the date of the appointment ;

(iii) his office address ; and

(b) send a copy of the public notice to the Registrar.

(2) Where the administrator fails to comply with the

requirements of this section he shall be guilty of an offence

and be liable on conviction to a fine not exceeding fifty

thousand rupees.

Notice of 411. (1) Where an administrator is appointed in respect

administration

of a company, every agreement entered into and every

document issued by or on behalf of the company or the

administrator and on which the name of the company appears,

shall state clearly that an administrator has been appointed.

(2) A failure to comply with the requirements of

subsection (1) shall not affect the validity of the agreement

or document.

(3) Every person who—

(a) contravenes the requirements of subsection (1); or

(b) knowingly or willfully authorises or permits a

contravention of subsection (1),

shall be guilty of an offence and be liable on conviction to a

fine not exceeding fifty thousand rupees.

THE ADMINISTRATOR

Qualifications of 412. (1) The following persons may not be appointed

administrator. or act as administrator of a company :—

(a) a person who is under eighteen years of age;

(b) a creditor of the company;

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(c) a person who is or who has within the period of two

years immediately preceding the commencement

of the receivership, been an officer or employee of

the company;

(d) a person who has or who has had within the period

of two years preceding the commencement of the

administration, an interest whether direct or indirect,

in a share issued by the company;

(e) a person who is an undischarged insolvent;

(f) a person who has been adjudged to be of unsound

mind under the Mental Diseases Ordinance (Cap.

227);

(g) a person in respect of whom an order has been made

under subsection (5) of section 468;

(h) a person who was prohibited from being a director

of or being concerned or taking part in the

promotion, formation or management of a company

under section 188 of the Companies Act, No. 17 of

1982, or who would be so prohibited but for the

repeal of that Act; or

(i) a person who is prohibited from being a director or

promoter of or being concerned or taking part in the

management of a company under section 213 or

214.

(2) A body corporate shall not be appointed or act as an

administrator.

(3) A person who acts in contravention of subsection (1)

or subsection (2), shall be guilty of an offence and be liable

on conviction to a fine not exceeding two hundred thousand

rupees.

310 Companies Act, No. 07 of 2007

Validity of 413. Any act done by a person as an administrator shall

acts of be valid notwithstanding the fact that such person is not

administrator.

qualified to act as an administrator.

Consent to 414. The appointment of a person as an administrator

be shall be of no effect, unless that person consents in writing to

appointmented. being appointed as an administrator.

Vacancy in 415. (1) The office of administrator shall become vacant

office of if the person holding that office resigns, dies, is removed

administrator. from office by the court or becomes disqualified under section

412.

(2) A person may resign from the office of administrator

by appointing another person as his successor, and delivering

notice in writing of the appointment of his successor to the

company and to the Registrar.

(3) The court may on the application of the company or a

shareholder or a director or creditor of the company or the

Registrar, review the appointment of a successor to an

administrator and may if it thinks fit, appoint another person

to be the administrator of the company in his place.

(4) Where for any reason other than resignation a vacancy

occurs in the office of administrator, written notice of the

vacancy shall forthwith be delivered to the company and to

the Registrar by the person vacating office or, if that person is

unable to act, by his personal representative .

(5) If as the result of the vacation of office by an

administrator no person is appointed to act as administrator,

the board of the company may appoint a person to act as

administrator.

(6) Where a vacancy occurs in the office of administrator

or a person has been appointed to act as an administrator

under subsection (5), as the case may be, the court may on the

application of the company or a shareholder or director or

creditor of the company or the Registrar, appoint another

person to be the administrator of the company.

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(7) An administrator appointed under subsection (5) or

subsection (6) shall, within ten working days of being

appointed deliver a notice of his appointment to the Registrar.

(8) An administrator may at any time be removed from

office by the court.

(9) A person vacating the office of administrator shall

where practicable, provide such information and give such

assistance to his successor as that person may reasonably

require.

(10) On the application of a person appointed to fill a

vacancy in the office of administrator, the court may make

any order that it considers necessary or desirable to facilitate

the performance of the administrator’s duties.

(11) Every person who fails without reasonable excuse

to comply with the requirements of subsection (4) or who

fails to comply with the provisions of subsection (7) shall be

guilty of an offence and be liable on conviction to a fine not

exceeding fifty thousand rupees.

POWERS OFADMINISTRATOR

416. (1) An administrator— Powers of

administrators.

(a) shall manage the affairs, business and property of

the company;

(b) may do all such things as may be necessary or

desirable for the management of the affairs, business

and property of the company;

(c) without limiting the powers specified in paragraphs

(a) and (b), shall have all the powers that could be

exercised by a receiver of the whole of the property

and undertaking of the company under sections 443,

445 and 446.

312 Companies Act, No. 07 of 2007

(2) The administrator may apply to the court for directions

in relation to any matter arising in connection with the

carrying out of his functions.

(3) Where the exercise of any power conferred on the

company or its board or officers by this Act or by the company’s

articles could interfere with the exercise by the administrator

of his powers, such power shall not be exercised by the

company, its board or officers, as the case may be, except

with the consent of the administrator, which may be given

generally or in relation to particular cases.

(4) Without limiting the generality of subsection (3), any

disposal or other dealing with the property of the company

without first obtaining the consent of the administrator, which

may be given generally or in relation to particular cases,

shall unless the court otherwise orders, be void.

(5) In exercising his powers the administrator is deemed

to act as the company’s agent, and a person dealing with the

administrator in good faith and for value, shall not be required

to inquire whether the administrator is acting within his

powers.

Power to deal 417. (1) The administrator of a company may dispose

with charged of or otherwise exercise his powers in relation to any property

property &c.,

of the company which is subject to a security to which this

subsection applies, as if the property were not subject to the

security.

(2) Provisions of subsection (1) shall apply to any security

which, when it was created, was a floating charge.

(3) Where on an application by the administrator, the court

is satisfied that the disposal (with or without other assets)

of—

(a) any property of the company subject to a security to

which subsection (1) does not apply; or

Companies Act, No. 07 of 2007 313

(b) any goods in the possession of the company under a

hire-purchase agreement,

would be likely to promote the purpose or one or more of the

purposes specified in the order appointing the administrator,

the court may by order authorise the administrator to—

(c) dispose of the property as if it were not subject to

the security; or

(d) dispose of the goods as if all rights of the owner

under the hire purchase agreement were vested in

the company.

(4) Where property is disposed of under subsection (1),

the holder of the security has the same priority in respect of

any property of the company directly or indirectly

representing the property disposed of, as he would have had

in respect of the property subject to the security.

(5) It shall be a condition of an order made by the court

under subsection (3) that—

(a) the net proceeds of the disposal; and

(b) where those proceeds are less than such amount as

may be determined by the court to be the net amount

that would be realised on a sale of the property or

goods in the open market, such sums as may be

required to make good the deficiency,

shall be applied towards discharging the sums secured by the

security, or payable under the hire purchase agreement.

(6) Where a condition imposed under subsection (5)

relates to two or more securities, that condition requires the

net proceeds of the disposal and any sum mentioned in

paragraph (b) of that subsection to be applied towards

discharging the sums secured by those securities, in the order

of their priorities.

314 Companies Act, No. 07 of 2007

(7) A copy of any order made under subsection (3) shall

within ten working days after the making of the order, be sent

by the administrator to the Registrar.

(8) Where the administrator fails to comply with the

requirements of subsection (7), he shall be guilty of an offence

and be liable on conviction to a fine not exceeding fifty

thousand rupees.

General duties 418. (1) The administrator on his appointment shall

of administrator.

take into his custody or control, all the property to which the

company is or appears to be entitled.

(2) The administrator shall manage the affairs, business

and property of the company—

(a) at any time before a proposal has been approved

under section 407 in accordance with any directions

of the court; and

(b) at any time after a proposal has been so approved, in

accordance with the proposal as from time to time

revised and with any directions of the court.

(3) The administrator shall summon a meeting of the

creditors of the company if—

(a) he is requested to do so in writing by one tenth in

value of the creditors; or

(b) he is directed to do so by the court.

Discharge of 419. (1) The administrator shall, where—

administrator or

variation of (a) it appears to him that the purpose or each of the

resolution

appointing purposes specified in the resolution appointing him

administrator. either have been achieved or is incapable of

achievement;

Companies Act, No. 07 of 2007 315

(b) he is required to do so by a meeting of the company’s

creditors summoned for the purpose,

may at any time, give notice to the company notifying that

the—

(c) administration ought to be terminated; or

(d) resolution appointing him as administrator ought

to be varied to specify an additional purpose.

(2) The administrator shall cease to hold office five

working days after giving a notice under paragraph (c) of

subsection (1), or on such later date as may be specified in

the notice, but in any event no more than ten working days

after the date on which the notice is given.

(3) Where the administrator gives notice under paragraph

(d) of subsection (1), the resolution shall be deemed to be

amended accordingly.

(4) Where a notice is given under subsection (1), the

administrator shall within ten working days after giving the

notice, deliver a copy of the notice to the Registrar.

(5) Where the administrator fails to comply with

subsection (4) he shall be guilty of an offence and be liable

on conviction to a fine not exceeding fifty thousand rupees.

420. (1) The remuneration to be paid to and expenses Remuneration

of the administrator and any indemnity to which he is entitled and expenses of

administrator.

under section 421, shall be paid out of the property of the

company, and shall have priority over any security which, as

created, was a floating charge.

(2) The court may on the application of the administrator

or the company or any creditor of the company, review or fix

the remuneration of the administrator in respect of any period

at a level which is reasonable in the circumstances.

316 Companies Act, No. 07 of 2007

Liability of 421. (1) Subject to the provisions of subsections (2)

administrator. and (3), an administrator is personally liable—

(a) on a contract entered into by the administrator in

the exercise of any of the administrator’s powers;

and

(b) for payment of wages or salary that during his

administration, accrue under a contract of

employment entered into before his appointment, if

notice of the termination of the contract is not

lawfully given within ten working days after the

date of appointment.

(2) The court may, on the application of an administrator,

extend the period within which notice of the termination of a

contract is required to be given under paragraph (b) of

subsection (1), on such terms and conditions as the court

thinks fit, provided that application is made before the expiry

of the period referred to in such paragraph.

(3) Subject to the provisions of subsection (6), an

administrator is personally liable to the extent specified in

subsection (4) for rent and any other payments becoming

due under an agreement subsisting at the date of his

appointment, relating to the use, possession, or occupation

of property by the company.

(4) The liability of an administrator under subsection (3)

is limited to that portion of the rent or other payments which

is attributable to the period, commencing ten working days

after the date of the appointment of the administrator and

ending on—

(a) the date on which the administration ends; or

(b) the date on which the company ceases to use,

possess, or occupy the property,

whichever is the earlier.

Companies Act, No. 07 of 2007 317

(5) The court may, on the application of an administrator—

(a) limit the liability of the administrator to a greater

extent than that specified in subsection (4); or

(b) exempt the administrator from liability under

subsection (3).

(6) Nothing in subsection (3) or subsection (4)—

(a) shall be taken as giving rise to an adoption by an

administrator of an agreement referred to in

subsection (3); or

(b) shall render an administrator liable to perform any

other obligation under such an agreement.

(7) An administrator is entitled to an indemnity out of

the property of the company in respect of his personal liability

under this section.

422. (1) The court may relieve a person who has acted Relief from

liability.

as an administrator from all or any personal liability incurred

in the course of the administration, if it is satisfied that—

(a) the liability was incurred solely by reason of a defect

in the appointment of the administrator or in the

order of the court under which the administrator

was appointed; and

(b) the administrator acted honestly and reasonably and

ought in the circumstances to be exempted.

(2) The court may exercise its powers under subsection (1)

subject to such terms and conditions as it thinks fit.

318 Companies Act, No. 07 of 2007

ASCERTAINMENT AND INVESTIGATION OF COMPANY’SAFFAIRS

Obligations of 423. (1) Where an administrator is appointed, the company

company and and every director of the company shall—

directors to

provide

information &c. (a) make available to the administrator all books,

documents, and information relating to the business,

affairs and property of the company in the

company’s possession or under its control;

(b) if required to do so by the administrator, verify by

affidavit that the books, documents, and information

are complete and correct;

(c) give the administrator such assistance as the

administrator may reasonably require;

(d) if the company has a common seal, make the

common seal available for use by the administrator.

(2) Where the company or a director fails to comply with

the requirements of subsection (1), the court may on the

application of the administrator, make an order requiring the

company or a director of the company to comply with the

same.

MISCELLANEOUS

Creditors’ 424. (1) Where a meeting of creditors has approved the

committee. administrator’s proposals, the meeting may if it thinks fit,

establish a committee (hereinafter referred to as the “creditors’

committee”), to exercise the functions conferred on it under

this Act.

(2) Where a creditors’ committee is established, it may on

giving not less than five working days notice, require the

administrator to attend before it at any reasonable time and

provide it with such information relating to the carrying out

of his functions as it may reasonably require.

Companies Act, No. 07 of 2007 319

425. (1) During any time at which an administrator holds Protection of

interests of

office, a creditor or shareholder of a company may apply to

creditors and

the court for an order under this section, on the ground that— share holders.

(a) the company’s affairs, business and property are

being or have been managed by the administrator

in a manner which is unfairly discriminatory or

unfairly prejudicial to the interests of the creditor or

shareholder; or

(b) any actual or proposed act or omission of the

administrator is or would be unfairly discriminatory

or unfairly prejudicial to the interests of such creditor

or shareholder.

(2) On an application being made to court under this

section, court may, where it considers it just and equitable to

do so and subject to the provisions of subsection (3), make

such order as it thinks fit including, without limiting the

generality of this subsection, and order—

(a) regulating the future management by the

administrator of the company’s affairs, business and

property;

(b) requiring the administrator to refrain from doing or

continuing an act complained of by the applicant

or to do an act which the applicant has complained

he has omitted to do;

(c) requiring the calling of a meeting of creditors or

shareholders for the purpose of considering such

matters as the court may direct;

(d) discharging the administrator and making such

consequential provisions as the court thinks fit.

320 Companies Act, No. 07 of 2007

(3) An order under this section shall not prejudice or

prevent—

(a) the implementation of a compromise or arrangement

approved under Part IX or Part X of this Act; or

(b) where the application for the order was made more

than twenty working days after the approval of any

proposals or any revised proposals under section

407 or section 409, as the case may be, the

implementation of those proposals or revised

proposals.

Application to 426. (1) The provisions contained in sections 453, 454,

administrator of 460, 468, 469 and 470 shall apply to an administrator and to

provisions

relating to a company under administration with all necessary

receivers. modifications, and in particular as if—

(a) the administrator were a receiver appointed by the

court ;

(b) references to the property in receivership were

references to the property and undertaking of the

company ; and

(c) references to the grantor were references to the

company.

PART XIV

FLOATING CHARGES

Company may 427. (1) A company may grant a charge to which this

grant floating Part of this Act applies (in this Act referred to as a “floating

charge. charge”) over the whole or any part of the property and

undertaking of the company, for the purpose of securing a

debt or any other obligation incurred or to be incurred by the

company or any other person.

Companies Act, No. 07 of 2007 321

(2) A floating charge may apply to any property of the

company whether held by the company at the time of creation

of the floating charge or acquired thereafter, including—

(a) movable and immovable property ;

(b) uncalled capital ;

(c) circulating assets, including cash, stock in trade,

raw materials, book debts and other receivables.

(3) A floating charge created under this Part of this Act

shall, notwithstanding the provisions contained in any other

law, have effect as a security over the property of the company

to which it is expressed to apply, in the manner and to the

extent specified in this Part—

(a) subject to the provisions of the Registration of

Documents Ordinance (Cap. 117) where applicable;

and

(b) subject to section 103 of the Mortgage Act (Cap.

89).

428. (1) A floating charge may be created by a company Instrument

only by the execution under the name of the company in creating floating

charge.

accordance with the provisions of paragraph (a) of subsection

(1) of section 19, of an instrument which is expressed to

create such a charge.

(2) An instrument which creates a floating charge over

property which includes land, shall be registrered under the

Registration of Documents Ordinance (Cap. 117) as an

instrument affecting that land.

(3) An instrument which creates a floating charge over

property which includes movable property, shall be registered

under the Registration of Documents Ordinance (Cap. 117)

as if it were a bill of sale. Where the floating charge also

322 Companies Act, No. 07 of 2007

includes land, the provisions of sections 16 to 22 of the

Registration of Decuments Ordinance (Cap. 117) shall not in

any way affect the instrument, in so far as it relates to land.

(4) The provisions of sections 17 and 20 of the

Registration of Documents Ordinance (Cap. 117) shall apply

in relation to a floating charge, as if registration of that

floating charge—

(a) under Chapter IV of that Ordinance in the district in

which the registered office of the company is

situated; and

(b) under Part VI of this Act,

were registration under Chapter IV of that Ordinance, in every

district in Sri Lanka.

(5) For the avoidance of doubt, nothing in section 63 of

the Mortgage Act (Cap. 89) shall apply to or in relation to

any instrument creating a floating charge.

Provisions of 429. (1) The terms specified in the Eleventh Schedule

instrument

hereto shall be implied terms of every instrument which

creating floating

charge. creates a floating charge, except to the extent that the terms

of any such instrument expressly exclude or are inconsistent

with those implied terms.

(2) An instrument creating a floating charge may contain—

(a) provisions prohibiting or restricting the creation of

any fixed security or any other floating charge

having priority over or ranking equally with the

floating charge ; or

(b) provisions regulating the order in which the floating

charge shall rank with any other subsisting or future

floating charges or fixed securities over that

property or any part of it.

Companies Act, No. 07 of 2007 323

430. (1) Subject to the terms of the instrument under Dealing with

which it is created, the creation of a floating charge in respect property subject

to floating

of any property shall not affect the ability of the company to

charge before

deal with that property in the normal course of business. attachment.

(2) Where—

(a) any property of a company is subject to a floating

charge which has not attached to that property ; and

(b) the company has sold or disposed of that property,

any person who receives that property from the company

shall be liable to account to the person entitled to the benefit

of the floating charge for the value of the property, in the

circumstances set out in subsection (3) or subsection (4).

(3) A person may be liable to account for the value of

property received by that person under subsection (2), if—

(a) the sale or disposal of the property did not take place

in the normal course of the company’s business ;

and

(b) that person knew or by reason of his relationship

with the company ought to have known, that the

sale or disposal did not take place in the normal

course of the company’s business.

(4) A person may be liable to account for the value of

property received by that person under subsection (2), if—

(a) the sale or disposal of the property is a breach of the

instrument creating the floating charge ; and

(b) that person knew or by reason of his relationship

with the company ought to have known, of the terms

of the instrument and the circumstances giving rise

to a breach of those terms.

324 Companies Act, No. 07 of 2007

Ranking of 431. (1) Where any property of a company is subject

floating both to a floating charge and to a fixed security arising by

charges.

operation of law, the fixed security shall have priority over

the floating charge.

(2) Where any property of a company is subject both to a

floating charge and to a fixed security granted by the company,

the fixed security shall have priority over the floating charge,

unless—

(a) the instrument creating the floating charge—

(i) prohibited the granting by the company of

that fixed security ; and

(ii) had been registered under Part VI of this Act

before the date on which the fixed security

was granted by the company ; or

(b) the instrument creating the floating charge is

expressed to take priority over the fixed security,

and the person entitled to the benefit of the fixed

security has consented in writing to that priority ; or

(c) before the date on which the fixed security was

granted by the company, the floating charge had

attached to the property pursuant to section 433

and either—

(i) a receiver had been appointed in respect of

the property and the person to whom the fixed

security was granted had notice of the

appointment of the receiver ; or

(ii) the person to whom the fixed security was

granted knew or by reason of his relationship

with the company ought to have known,

that—

(A) the floating charge had attached to that

property ;

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(B) the grant of the fixed security was a

breach of the instrument creating the

floating charge ; or

(C) the grant of the fixed security did not

occur in the normal course of the

company’s business.

(3) Where any property of a company is subject to more

than one floating charge, those floating charges shall rank

among themselves according to the date of registration under

Part VI, subject to any provision to the contrary in an

instrument creating a floating charge which has been

consented to in writing by the person entitled to the benefit

of the floating charge, the priority of which is postponed by

that provision.

(4) For the avoidance of doubt and subject to the terms of

the instrument under which it is created, the priority of a

floating charge shall not be affected by the fact that all or any

part of the debts or obligations secured by that floating charge,

were incurred or arose after —

(a) the creation and registration by the company of a

subsequent floating charge ; or

(b) the grant by the company of any fixed security in

respect of the whole or any part of the property

comprised in the floating charge.

(5) A person shall be deemed to have received notice of

the appointment of a receiver for the purposes of subsection

(2), if—

(a) the person knows or ought by reason of his

relationship with the company to know that a

receiver has been appointed ; or

(b) public notice of the appointment of the receiver has

been given in accordance with paragraph (b) of

subsection (1) of section 440.

326 Companies Act, No. 07 of 2007

(6) Without limiting the provisions contained in

subsection (3) of section 427, where land owned by a company

is subject to a floating charge and to a fixed security which

has been registered under the Registration of Documents

Ordinance (Cap. 117), the fixed charge shall have priority

over the floating charge, unless the floating charge was

registered in repsect of that land under the Registration of

Documents Ordinance (Cap. 117) prior to the registration of

the fixed security.

Alteration and 432. (1) The terms of an instrument creating a floating

discharge of charge may be varied in the same manner in which an

floating charges.

instrument may be executed by the company.

(2) Subject to the modifications contained in subsection

(3) of this section subsections (1) and (3) of section 102,

sections 103 and 108 shall apply to an instrument of

alteration under this section, which—

(a) prohibits or restricts creation of any fixed security

or any other floating charge having priority over or

ranking equally with the floating charge ;

(b) varies or otherwise regulates the order of and the

ranking of the floating charge in relation to fixed

securities or to other floating charges ;

(c) releases property from the floating charge ; or

(d) where the floating charge secures a specified

obligation or a specified amount, alters that

obligation or increases that amount, as the case may

be.

(3) The provisions of subsections (1) and (3) of sections

102, 103 and 108 shall apply in respect of an instrument of

alteration to which subsection (2) applies, as if—

(a) references to a charge were references to an alteration

to a floating charge ; and

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(b) references to the creation of a charge, were references

to the execution of the instrument of alteration.

(4) Where an alteration to the terms of an instrument

creating a floating charge has the effect of extending the

floating charge to property not previously comprised in the

floating charge, the priority of the floating charge in respect

of the additional property shall be determined, as if the

instrument by which the amendments were affected were an

instrument creating a new floating charge in respect of that

additional property.

(5) A floating charge may be released in respect of the

whole or any part of the property comprised in it, in the same

manner in which such a charge may be created.

433. (1) A floating charge shall attach to and constitute Circumstances in

a fixed charge in respect of all property comprised in the which floating

charge attaches

charge, on the occurrence of any of the following events :—

to property.

(a) the appointment of a receiver of the whole or any

part of the property or undertaking of the company,

whether under the terms of the instrument creating

the floating charge or otherwise ;

(b) the commencement of the winding up of the

company ;

(c) the disposal by the company of the whole or any

part of its undertaking, other than in the normal

course of its business ;

(d) the company ceasing to carry on business ;

(e) any other event the occurrence of which is expressed

in the instrument creating the floating charge to

have the effect of causing that charge to attach to

the property comprised in it.

328 Companies Act, No. 07 of 2007

(2) Where—

(a) a floating charge has attached to any property of a

company ; and

(b) the company sells or otherwise disposes of any

property to which the charge has attached,

the person to whom the property is sold or otherwise disposed

of, shall be liable to account to the person entitled to the

benefit of the floating charge for the value of the property,

if—

(c) a receiver had been appointed in respect of the

property and that person had notice of the

appointment of the receiver ; or

(d) that person knew or ought by reason of his

relationship with the company to have known

that—

(i) the floating charge had attached to that

property ;

(ii) the sale or disposal was a breach of the

instrument creating the floating charge ; or

(iii) the sale or disposal did not occur in the normal

course of the company’s business.

(3) Nothing in subsection (2) shall apply to a sale of

property—

(a) by or under the authority of a receiver appointed in

respect of the property, by the person entitled to the

benefit of the floating charge ;

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(b) pursuant to a floating charge or other security in

respect of the property which ranks prior to the

floating charge, to the benefit of which the person

making the claim is entitled ; or

(c) by the court.

(4) A person who is liable to account to the holder of a

floating charge for the value of property disposed of by the

company, shall be given credit for the value of any

consideration provided to the company for that property

which has become available to the holder of the floating

charge, in substitution for that property.

(5) A person shall be deemed to have received notice of

the appointment of receiver for the purposes of subsection

(2), if—

(a) the person knows or ought by reason of his

relationship with the company to know, that a

receiver has been appointed ; or

(b) public notice of the appointment of the receiver has

been given is accordance with paragraph (b) of

subsection (1) of section 440.

(6) For the avoidance of doubt, where a floating charge

has become a fixed charge under this section, the grantee

may without prejudice to any right he may have to appoint a

receiver under Part XV, exercise any other remedy which is

available to the holder of a fixed charge under the Mortgage

Act (Cap. 89) or under any other written law.

330 Companies Act, No. 07 of 2007

PART XV

RECEIVERS AND MANAGERS

Interpretation. 434. (1) In this Part of this Act, unless the context

otherwise requires—

“creditor” includes a person to whom the grantor owes

a debt or is under a liability, whether present or

future, certain or contingent and whether an

ascertained debt or liability or a liability in

damages ;

“grantee” means in relation to an instrument which

creates a floating charge, the person entitled to the

benefit of the instrument ;

“grantor” means the person in respect of whose property

a receiver is or may be appointed ;

“liquidator” means a liquidator appointed under

Part XII ;

“mortgage” includes a charge on property for securing

money or money’s worth ;

“mortgagee” includes a person from time to time

deriving title under the original mortgagee, but

does not include a receiver ;

“preferential claims” means the claims referred to in

the Ninth Schedule (except paragraph 1 of that

Schedule) ;

“property” includes—

(a) movable and immovable property ;

(b) an interest in movable or immovable

property ;

Companies Act, No. 07 of 2007 331

(c) a debt ;

(d) any thing in action ;

(e) any other right or interest ;

“property in receivership” means property in respect

of which a receiver is appointed ;

“receiver” means a receiver or a manager or a receiver

and a manager in respect of any property,

appointed—

(a) under any instrument ; or

(b) by the court in the exercise of a power

conferred on the court by this Act,

whether or not the person appointed is empowered

to sell any of the property in receivership, but

does not include—

(c) a mortgagee who, whether personally or

through an agent, exercises a power to—

(i) receive income from mortgaged

property ;

(ii) enter into possession or assume control

of mortgaged property ; or

(iii) sell or otherwise alienate mortgaged

property ; or

(d) an agent of any such mortgagee.

POWER TO APPOINT RECEIVER

435. An instrument that creates a floating charge in Instrument may

respect of the whole of the property and undertaking of a confer power to

appoint receiver.

company, may confer on the grantee the power to appoint a

receiver of the property and undertaking of the company.

332 Companies Act, No. 07 of 2007

QUALIFICATIONS OF RECEIVERS

Qualifications 436. (1) The following persons may not be appointed

of receivers.

or act as a receiver :—

(a) a person who is under eighteen years of age ;

(b) a creditor of the grantor ;

(c) a person who is or who has within the period of two

years immediately preceding the commencement

of the receivership, been—

(i) an officer or employee of the grantor; or

(ii) an officer or employee of the mortgagee of

the property in receivership;

(d) a person who has or who has had within the period

of two years preceding the commencement of the

receivership, an interest, whether direct or indirect,

in a share issued by the grantor;

(e) a person who is an undischarged insolvent;

(f) a person who has been adjudged to be of unsound

mind under the Mental Diseases Ordinance (Cap.

227);

(g) a person in respect of whom an order has been made

under subsection (5) of section 468;

(h) a person who was prohibited from being a director

or promoter of or being concerned or taking part in

the management of a company under section 186 of

the Companies Act, No. 17 of 1982, or who would

be so prohibited but for the repeal of that Act;

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(i) a person who is prohibited from being a director or

promoter of or being concerned or taking part in the

management of a company under section 213 or

214;

(j) a person who is disqualified from acting as a receiver

by the instrument that confers the power to appoint

a receiver.

(2) A body corporate shall not be appointed or act as a

receiver.

(3) A person who contravenes subsection (1) or subsection

(2), shall be guilty of an offence and be liable on conviction

to a fine not exceeding two hundred thousand rupees.

APPOINTMENT OF RECEIVER

437. (1) Where an instrument confers on the grantee Appointment of

the power to appoint a receiver of the property and receiver under

undertaking of a company, the grantee may appoint a receiver an instrument.

by an instrument in writing signed by or on behalf of the

grantee.

(2) A receiver appointed by or under a power conferred

by an instrument shall be the agent of the grantor, unless the

instrument expressly provides otherwise.

(3) A receiver may be appointed under this section —

(a) notwithstanding anything to the contrary contained

in any other law; and

(b) whether or not the property in respect of which the

receiver is appointed includes immovable property.

(4) For the avoidance of doubt—

(a) the appointment of a receiver under this section is

not a hypothecary action; and

334 Companies Act, No. 07 of 2007

(b) nothing in section 46 of the Mortgage Act (Cap. 89)

shall affect, or shall apply in relation to, the

appointment of a receiver under this section.

Extent of power 438. (1) A power conferred by an instrument to appoint

to appoint a a receiver includes the power to appoint—

receiver.

(a) two or more receivers;

(b) a receiver additional to one or more presently in

office;

(c) a receiver to succeed a receiver whose office has

become vacant,

unless the instrument expressly provides otherwise.

(2) Two or more receivers may act jointly or severally to

the extent that they have the same powers, unless the

instrument under which or the order of the court by which

they are appointed, expressly provides otherwise.

Court may 439. (1) Without limiting the inherent jurisdiction of

appoint a

the court under any other written law, the court may appoint

receiver.

a receiver of any property which is subject to a fixed security

or a floating charge granted by a company, on the application

of the grantee of that security or charge, where it is satisfied

that—

(a) the company has failed to pay a debt due to the

grantee or has otherwise failed to meet any

obligation to the grantee;

(b) the company proposes to sell or otherwise dispose

of the secured property in breach of the terms of any

instrument creating the security or charge; or

(c) it is necessary to do so to ensure the preservation of

the secured property for the benefit of the grantee.

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(2) A receiver may be appointed under this section—

(a) notwithstanding anything to the contrary in any

other law; and

(b) whether or not the property in respect of which the

receiver is appointed, includes immovable property.

(3) For the avoidance of doubt—

(a) the appointment of a receiver under this section is

not a hypothecary action; and

(b) nothing in section 46 of the Mortgage Act (Cap.

89) shall affect, or shall apply in relation to the

appointment of a receiver under this section.

440. (1) A receiver shall forthwith after being appointed Notice of

appointment of

and in any event no later than ten working days after being

receiver.

appointed —

(a) give written notice of his or her appointment to the

grantor;

(b) give public notice of his or her appointment,

including —

(i) the receiver’s full name;

(ii) the date of the appointment;

(iii) the receiver’s office address; and

(iv) a brief description of the property in

receivership ; and

(c) send a copy of the public notice to the Registrar.

336 Companies Act, No. 07 of 2007

(2) Where the appointment of the receiver is in addition

to a receiver who already holds office or is in place of a

person who has vacated office as receiver, as the case may be,

every notice under this section shall state that fact.

(3) Every receiver who acts in contravention of this section

shall be guilty of an offence and be liable on conviction to a

fine not exceeding fifty thousand rupees.

Notice of 441. (1) Where a receiver is appointed in respect of the

receivership. property and undertaking of a company, every agreement

entered into and every document issued by or on behalf of

the grantor or the receiver and on which the name of the

grantor appears, shall state clearly that a receiver has been

appointed.

(2) Where a receiver is appointed in relation to a specific

asset or assets, every agreement entered into and every

document issued by or on behalf of the grantor or the receiver

that relates to the asset or assets, and on which the name of

the grantor appears, shall state clearly that a receiver has

been appointed.

(3) A failure to comply with subsection (1) or subsection

(2) shall not affect the validity of the agreement or document.

(4) Every person who—

(a) acts in contravention of subsection (1) or subsection

(2); or

(b) knowingly or willfully authorises or permits a

contravention of subsection (1) or subsection (2),

shall be guilty of an offence, and be liable on conviction to a

fine not exceeding fifty thousand rupees.

Vacancy in 442. (1) The office of receiver shall become vacant if the

office of person holding office resigns, dies, or becomes disqualified

receiver.

under section 436.

Companies Act, No. 07 of 2007 337

(2) A receiver appointed under a power conferred by an

instrument, may resign office by giving not less than five

working days’ written notice of his intention to resign, to the

person by whom the receiver was appointed.

(3) If, for any reason other than resignation, a vacancy

occurs in the office of receiver, written notice of the vacancy

shall forthwith be delivered to the Registrar by the person

vacating office or if that person is unable to act, by his legal

representative.

(4) A receiver appointed by the court shall not resign

office without prior leave of the court.

(5) A person vacating the office of receiver shall where

practicable, provide such information and give such

assistance in the conduct of the receivership to his or her

successor as that person may reasonably require.

(6) On the application of a person appointed to fill a

vacancy in the office of receiver, the court may make any

order that it considers necessary or desirable to facilitate the

performance of the receiver’s duties.

(7) Every person who fails without reasonable cause to

comply with subsection (3), shall be guilty of an offence and

be liable on conviction to a fine not exceeding fifty thousand

rupees.

POWERS OF RECEIVERS

443. (1) A receiver shall have the powers and authorities Powers of

expressly or impliedly conferred by the instrument or the receivers.

order of the court by or under which the appointment was

made.

(2) Subject to the instrument or the order of the court by

or under which the appointment was made, a receiver shall

have and may exercise the powers specified in the Twelfth

Schedule.

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Precedence 444. (1) Where there are two or more floating charges

among subsisting over all or any part of the property of the company,

receivers.

a receiver may be appointed under this Part of this Act by

virtue of each such charge. A receiver appointed by or on the

application of the holder of a floating charge, which has

priority over any other floating charge by virtue of which a

receiver has been appointed, has the powers conferred on a

receiver by this Act, to the exclusion of any other receiver.

(2) Where two or more floating charges rank equally with

one another, and two or more receivers have been appointed

by virtue of such charges, the receivers so appointed are

deemed to have been appointed as joint receivers, and shall

act jointly, unless the instrument of appointment or each of

the respective instruments of appointment, otherwise provide.

(3) Subject to subsection (4), the powers of a receiver

appointed by or on the application of the holder of a floating

charge are suspended by, and as from the date of the

appointment of a receiver by or on the application of the

holder of a floating charge having priority over that charge,

to such extent as may be necessary to enable the receiver

second mentioned, to exercise his powers under this Act. Any

powers so suspended shall take effect again when the prior

floating charge ceases to attach to the property subject to the

charge, or when the appointment of a receiver under the prior

floating charge ceases in respect of that property, whichever

occurs first.

(4) The suspension of the powers of a receiver under

subsection (3) does not have the effect of requiring him to

release any part of the property (including any letters or

documents) of the company from his control, until he receives

from the receiver superceding him a valid indemnity (subject

to the limit of the value of such part of the property as is

subject to the charge, by virtue of which he was appointed)

in respect of any expenses, charges and liabilities he may

have incurred in the performance of his functions as receiver.

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(5) The suspension of the powers of a receiver under this

section shall not cause the floating charge by virtue of which

he was appointed, to cease to attach to the property in respect

of which he was appointed.

(6) Nothing in this section shall prevent the same receiver

being appointed by virtue of two or more floating charges.

445. (1) A receiver has the same powers as the board of Power to make

calls on shares.

a company has or if the company is being wound up, as the

board would have had if it was not being wound up, to make

calls on the shareholders of the company in respect of

uncalled capital that is charged under the instrument by or

under which the receiver was appointed, and to charge interest

on and enforce payment of calls.

(2) For the purposes of subsection (1), the expression

“uncalled capital” includes any amount payable in respect

of the issue of shares or under the articles of the company.

(3) The making of a call or the exercise of a power under

subsection (1) is, as between the shareholders of the company

affected and the company, deemed to be a proper call or

power made or exercised by the directors of the company.

446. (1) A receiver may execute in the name and on Execution of

behalf of the company, all documents necessary or incidental documents.

to the exercise of the receiver’s powers.

(2) A document signed on behalf of a company by a

receiver, shall be deemed to have been properly signed on

behalf of the company for the purposes of section 19.

(3) Notwithstanding anything to the contrary in any other

law or the articles of association of a company, where the

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instrument under which a receiver is appointed empowers

the receiver to execute documents and to use the company’s

common seal for that purpose, the receiver may executive

documents in the name and on behalf of the company by

affixing the company’s common seal to the documents, and

attesting the affixing of the common seal.

(4) Any document which is executed in the manner

prescribed in subsection (3), shall be deemed to have been

properly executed by the company.

Obligations 447. (1) Where a receiver is appointed in respect of the

of company whole or any part of the property of a company, the company

and

and every director of the company shall—

directors.

(a) make available to the receiver all books, documents,

and information relating to the property in

receivership in the company’s possession or under

the company’s control;

(b) if required to do so by the receiver, verify by affidavit

that the books, documents and information are

complete and correct;

(c) give the receiver such assistance as he or she may

reasonably require;

(d) if the company has a common seal, make the

common seal available for use by the receiver.

(2) On the application of the receiver, the court may make

an order requiring the company or a director of the company,

to comply with the requirements of subsection (1).

Validity of 448. (1) Subject to subsection (2), no act of a receiver

acts of shall be deemed to be invalid merely because the receiver

receivers.

was not validly appointed, or is disqualified from acting as a

receiver, or is not authorised to do the act.

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(2) No transaction entered into by a receiver shall be

deemed to be invalid merely because the receiver was not

validly appointed or is not authorised to enter into the

transaction, unless the person dealing with the receiver has

or ought to have, by reason of his or her relationship with the

receiver or the person by whom the receiver was appointed,

knowledge that the receiver was not validly appointed or did

not have authority to enter into the transaction.

449. (1) Where the consent of a mortgagee is required Consent of

mortgagee to

for the sale of property in receivership and the receiver is

sale of property.

unable to obtain that consent, the receiver may apply to the

court for an order authorising the sale of the property, either

by itself or together with other assets.

(2) The court may on an application under subsection (1)

of this section, make such order as it thinks fit authorising

the sale of the property by the receiver, if satisfied that—

(a) the receiver has made reasonable efforts to obtain

the mortagee’s consent; and

(b) the sale—

(i) is in the interests of the grantor and the

grantor’s creditors; and

(ii) will not substantially prejudice the interests

of the mortgagee.

(3) An order under this section may be made subject to

such terms and conditions as the court thinks fit.

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DUTIES OF RECEIVERS

General duties of 450. (1) A receiver shall exercise his or her powers in

receivers.

good faith.

(2) A receiver shall exercise his or her powers in a manner

he or she believes on reasonable grounds to be in the interest

of the person in whose interests he or she was appointed.

(3) Without prejudice to the provisions contained in

subsections (1) and (2), a receiver shall exercise his or her

powers having reasonable regard to the interests of —

(a) the grantor;

(b) persons claiming through the grantor, interests in

the property in receivership;

(c) unsecured creditors of the grantor; and

(d) sureties who may be called upon to fulfil obligations

of the grantor.

(4) Where a receiver appointed under an instrument acts

or refrains form acting in accordance with any directions

given by the person in whose interests he or she was appointed,

the receiver shall be deemed not to be in breach of the duty

referred to in subsection (2), but shall remain liable for any

breach of the duty referred to in subsection (1) or the duty

referred to in subsection (3).

(5) Nothing in this section shall limit or affect the

application of section 451.

Duty of receiver 451. A receiver who exercises a power of sale of property

selling property. in receivership, owes a duty to the grantor to obtain the best

price reasonably obtainable as at the time of sale.

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452. Notwithstanding anything to the contrary in any No defence or

other law or anything contained in the instrument by or under indemnity.

which a receiver is appointed—

(a) it shall not be a defence to proceedings against a

receiver for a breach of the duty imposed by section

451, that the receiver was acting as the grantor’s

agent or under a power of attorney from the grantor;

(b) a receiver shall not be entitled to compensation or

indemnity from the property in receivership or the

grantor, in respect of any liability incurred by the

receiver arising from a breach of the duty imposed

by section 451.

453. A receiver shall keep money relating to the property Duty in relation

in receivership separate from other money received in the to money.

course of but not relating to the receivership, and from other

money held by or under the control of the receiver.

454. (1) A receiver shall at all times keep accounting Accounting

records that correctly record and explain all receipts, records.

expenditure, and other transactions relating to the property

in receivership.

(2) The accounting records shall be retained by the

receiver for not less than five years after the receivership

ends.

REPORTS OF RECEIVERS

455. (1) A receiver shall, not later than two months after First report by

his appointment, prepare a report on the state of affairs with receivers.

respect to the property in receivership, including —

(a) particulars of the assets comprising the property in

receivership;

(b) particulars of the debts and liabilities to be satisfied

from the property in receivership;

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(c) the names and addresses of the creditors with an

interest in the property in receivership;

(d) particulars of any encumbrance over the property

in receivership held by any creditor, including the

date on which it was created;

(e) particulars of any default by the grantor in making

relevant information available; and

(f) such other information as may be prescribed.

(2) The report referred to in subsection (1) shall also

include details of—

(a) the events leading up to the appointment of the

receiver, so far as the receiver is aware of them ;

(b) property disposed of and any proposals for the

disposal of property in receivership ;

(c) amounts owing as at the date of appointment, to

any person in whose interest the receiver was

appointed ;

(d) amounts owing as at the date of appointment, to

creditors of the grantor having preferential claims ;

and

(e) amounts likely to be available for payment to

creditors, other than those referred to in paragraph

(c) or paragraph (d).

(3) A receiver may omit from the report details of any

proposals for disposal of the property in receivership, if he

considers that their inclusion would materially prejudice the

exercise of his functions.

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(4) A receiver who fails to comply with this section shall

be guilty of an offence and be liable on conviction to a fine

not exceeding fifty thousand rupees.

456. (1) A receiver or a person who was a receiver at the Further reports

end of the receivership, as the case may be, shall not later by receiver.

than two months after—

(a) the end of each period of six months after his

appointment as receiver ; and

(b) the date on which the receivership ends,

prepare a further report summarising the state of affairs with

respect to the property in receivership as at those dates, and

the conduct of the receivership including all amounts

received and paid, during the period to which the report

relates.

(2) The report referred to in subsection (1) shall include

details of—

(a) property disposed of since the date of any previous

report and any proposals for the disposal of property

in receivership ;

(b) amounts owing as at the date of the report, to any

person in whose interest the receiver was appointed;

(c) amounts owing as at the date of the report, to

creditors of the grantor having preferential claims ;

and

(d) amounts likely to be available as at the date of the

report for payment to creditors, other than those

referred to in paragraph (b) or paragraph (c).

(3) A receiver may omit from the report required to be

prepared in accordance with paragraph (a) of subsection (1),

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details of any proposals for disposal of property in

receivership, if he or she considers that their inclusion would

materially prejudice the exercise of his or her functions.

(4) Every person who fails to comply with the

requirements of this section shall be guilty of an offence and

be liable on conviction to a fine not exceeding fifty thousand

rupees.

Extension of 457. (1) A period of time within which a person is

time for rquired to prepare a report under section 455 or section 456

preparing

may be extended, on the application of that person, by-

reports.

(a) the court, where the person was appointed a receiver

by the court ; or

(b) the Registrar, where the person was appointed a

receiver by or under an instrument.

Persons entitled 458. (1) A copy of every report prepared under section

to receive 455 or section 456 shall be sent by the person required to

reports. prepare it, to —

(a) the grantor ; and

(b) every person in whose interest the receiver was

appointed.

(2) A person appointed as a receiver by the court shall

file a copy of every report prepared under section 455 or

section 456 in the office of the court.

(3) Not later than fifteen working days after receiving a

written request for a copy of any report prepared under section

455 or section 456 from —

(a) a creditor, director, or surety of the grantor ; or

(b) any other person with an interest in any of the

property in receivership,

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and on payment of the reasonable costs of making and sending

the copy, the person who prepared the report shall send a

copy of the report to the person who requested for it.

(4) Within ten working days after preparing a report under

section 455 or section 456, the person who prepared the report

shall send or deliver a copy of the report to the Registrar.

(5) Every person who fails to comply with this section

shall be guilty of an offence and be liable on conviction to a

fine not exceeding fifty thousand rupees.

459. A person to whom a report must be sent in Persons entitled

accordance with the provisions of section 458 is entitled to to inspect

reports.

inspect the report during normal office hours at the office of

the person required to send it.

460. (1) A receiver of a company who considers that Duty to notify

the company or any director or officer of the company has breaches of any

committed an offence under this Act or the Securities and provisions of this

Act.

Exchange Commission of Sri Lanka Act, No. 36 of 1987,

shall report that fact to the Registrar.

(2) Nothing in subsection (1) shall impose any duty on a

receiver to investigate whether any offence of the kind referred

to in that subsection has been committed.

(3) A receiver who fails to comply with the provisions of

subsection (1) shall be guilty of an offence and be liable on

conviction to a fine not exceeding fifty thousand rupees.

461. (1) Not later than ten working days after the Notice of end of

receivership of a company ceases, the person who held office receivership.

as receiver at the end of the receivership shall send or deliver

to the Registrar, notice in writing of the fact that the

receivership has ceased.

(2) Every person who fails to comply with the

requirements of subsection (1) shall be guilty of an offence

and be liable on conviction to a fine not exceeding fifty

thousand rupees.

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APPLICATION OF PROPERTY AND LIABILITY FORCOMPANY OBLIGATIONS

Preferential 462. (1) The provisions of this section applies to a

claims. receiver who was appointed under an instrument that created

a floating charge.

(2) Subject to the provisions of section 449 and to the

rights of any of the persons referred to in subsection (3), a

receiver to whom this section applies shall pay moneys

received by him to the grantee of the floating charge by

virtue of which the receiver was appointed, in or towards

satisfaction of the debt secured by the floating charge.

(3) The following persons shall be entitled to payment

out of the property of a company subject to a floating charge,

in priority to the grantee of the charge, and in the following

order of priority :—

(a) first, the holder of any fixed security, over any part

of the property that ranks prior to the floating

charge;

(b) second, the receiver, for his expenses and

remuneration and any indemnity to which he is

entitled out of the property of the company ; and

(c) third, persons entitled to preferential claims, to the

extent and in the order of priority specified in the

Ninth Schedule (except paragraphs 1 and sub-

paragraph (b) of paragraph 7).

(4) In the application of the provisions of the Ninth

Schedule in accordance with the provisions of

subsection(3)—

(a) references to a “liquidator” shall be read as references

to a “receiver” ;

(b) references to the “commencement of the winding

up” shall be read as references to the “appointment

of the receiver” ;

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(c) references to “company being ordered to be wound

up” or to the “winding up of the company” shall be

read as references to the “company being put into or

being in receivership”.

463. (1) Subject to the provisions of subsection (2), a Powers of

receiver may be appointed or continue to act as a receiver receiver on

liquidation.

and exercise all the powers of a receiver in respect of property

of a company that is being wound up, unless the court orders

otherwise.

(2) A receiver holding office in respect of property referred

to in subsection (1) may act as the agent of the grantor, only

with the approval of the court or with the written consent of

the liquidator.

(3) A receiver who by reason of subsection (2) is not able

to act as the agent of the grantor, does not by reason only of

that fact, become the agent of a person by whom or in whose

interests the receiver was appointed.

(4) A debt or liability incurred by a grantor through the

acts of a receiver who is acting as the agent of the grantor in

accordance with subsection (2), is not a cost, charge or expense

of the liquidation.

464. (1) Subject to the provisions of subsections (2) Liability of

and (3), a receiver is personally liable – receiver.

(a) on a contract entered into by the receiver in the

exercise of any of the receiver’s powers ; and

(b) for payment of wages or salary that during the

receivership, accrue under a contract of employment

relating to the property in receivership and entered

into before his appointment, if notice of the

termination of the contract is not lawfully given

within ten working days after the date of

appointment.

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(2) The terms of a contract referred to in paragraph (a) of

subsection (1) may exclude or limit the personal liability of

a receiver, other than a receiver appointed by the court.

(3) The court may on the application of a receiver, extend

the period within which notice of the termination of a contract

is required to be given under paragraph (b) of subsection (1),

and may extend that period on such terms and conditions as

the court thinks fit.

(4) Every application under subsection (3) shall be made

before the expiry of the period referred to.

(5) Subject to the provisions of subsection (7), a receiver

is personally liable, to the extent specified in subsection (6),

for rent and any other payments becoming due under an

agreement subsisting at the date of his appointment, relating

to the use, possession, or occupation by the grantor of property

in receivership.

(6) The liability of a receiver under subsection (5), is

limited to that portion of the rent or other payments which is

attributable to the period commencing ten working days after

the date of the appointment of the receiver, and ending on

the date on which the receivership ends or the date on which

the grantor ceases to use, possess, or occupy the property,

whichever is the earlier.

(7) The court may on the application of a receiver —

(a) limit the liability of the receiver to a greater extent

than that specified in subsection (6) ; or

(b) exempt the receiver from liability under

subsection(5).

(8) Nothing contained in subsection (5) or subsection (6)

shall —

(a) be taken as giving rise to an adoption by a receiver

of an agreement referred to in subsection (5) ; or

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(b) render a receiver liable to perform any other

obligation under the agreement.

(9) A receiver is entitled to an indemnity out of the

property in receivership, in respect of his personal liability

under this section.

(10) Nothing contained in this section shall—

(a) limit any other right of indemnity to which a receiver

may be entitled ;

(b) limit the liability of a receiver on a contract entered

into without authority ; or

(c) confer on a receiver a right to an indemnity in respect

of liability on a contract entered into without

authority.

465. (1) The court may relieve a person who has acted Relief from

as a receiver from all or any personal liability incurred in the liability.

course of the receivership, if it is satisfied that :—

(a) the liability was incurred solely by reason of a defect

in the appointment of the receiver, or in the

instrument or order of the court by or under which

the receiver was appointed ; and

(b) the receiver acted honestly and reasonably and

ought in the circumstances to be exempted from

liability.

(2) The court may exercise its powers under subsection

(1) subject to such terms and conditions as it thinks fit.

(3) A person in whose interest a receiver was appointed is

liable, subject to such terms and conditions as the court thinks

fit, to the extent to which the receiver is relieved from liability

under subsection (1).

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COURT SUPERVISION OF RECEIVERS

Court 466. The court may on the application of a receiver —

supervision of

receivers.

(a) give directions in relation to any matter arising in

connection with the performance of the functions

of the receiver ;

(b) revoke or vary, any such directions.

(2) The court may, on the application of any of the persons

referred to in subsection (3) —

(a) in respect of any period, review or fix the

remuneration of a receiver at a level which is

reasonable in the circumstances ;

(b) to the extent that an amount retained by a receiver

as remuneration is found by the court to be

unreasonable in the circumstances, order the receiver

to refund the amount ;

(c) declare whether or not a receiver was validly

appointed in respect of any property or validly

entered into possession or assumed control of any

property.

(3) Any of the following person may make an application

to the court under subsection (2) :—

(a) the receiver ;

(b) the grantor ;

(c) a creditor of the grantor ;

(d) a person claiming through the grantor an interest in

the property in receivership ;

(e) a liquidator.

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(4) The powers conferred under subsections (1) and (2)

shall be —

(a) in addition to any other powers the court may

exercise under this Act, any other enactment or in

exercising its inherent jurisdiction ; and

(b) exercised whether or not the receiver has ceased to

act as receiver, when the application is made.

(5) The court may, on the application of a person referred

to in subsection (3), revoke or vary an order made under

subsection (2).

(6) Subject to the provisions of subsection (7), it would

be a defence to a claim against a receiver in relation to any

act or omission by the receiver, that such act or omission was

done or omitted to be done in compliance with a direction

given under subsection (1).

(7) The court may on the application of a person referred

to in subsection (3), order that by reason of the circumstances

in which a direction was obtained under subsection (1), a

receiver is not entitled to the protection given by subsection

(6).

467. (1) The court may subject to the provisions of Court may

subsection (2), on the application of the grantor or a liquidator terminate or

limit

of the grantor — receivership.

(a) order that a receiver shall cease to act as such as

from a specified date and prohibit the appointment

of any other receiver in respect of the property in

receivership ;

(b) order that a receiver shall as from a specified date,

act only in respect of specified assets forming part

of the property in receivership.

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(2) An order under subsection (1) may be made only where

the court is satisfied that —

(a) the purpose of the receivership has been satisfied so

far as possible ; or

(b) circumstances no longer justify its continuation.

(3) Unless the court orders otherwise, a copy of an

application under this section shall be served on the receiver

not less than five working days before the hearing of the

application, and the receiver may appear and be heard at the

hearing.

(4) An order under subsection (1) may be made on such

terms and conditions as the court thinks fit.

(5) An order under this section shall not affect a security

or charge over the property, in respect of which the order is

made.

(6) The court may on the application of any person who

applied for or is affected by the order, rescind or amend an

order made under this section.

Orders to enforce 468. (1) An application for an order under this section

receiver’s duties. may be made by —

(a) the registrar ;

(b) a receiver ;

(c) a person seeking appointment as a receiver ;

(d) the grantor ;

(e) the grantee,

(f) a person with an interest in the property in

receivership ;

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(g) a creditor of the grantor ;

(h) a guarantor of an obligation of the grantor ;

(i) a liquidator of the grantor;

(j) a receiver of the property of a grantor, in relation to

a failure to comply by another receiver of the

property of the grantor.

(2) No application may be made to the court under

paragraph (j) of subsection (1) in relation to a failure to

comply, unless notice of such failure to comply has been

served on the receiver not less than five working days before

the date of the application and , as at the date of the

application, there is a continuing failure to comply.

(3) Where the court is satisfied that there is or has been a

failure to comply, the court may —

(a) relieve the receiver of the duty to comply, wholly or

in part ; or

(b) without prejudice to any other remedy that may be

available in relation to a breach of duty by the

receiver, order the receiver to comply to the extent

specified in the order.

(4) The court may in respect of a person who fails to comply

with an order made under paragraph (b) of subsection (3), or

is or becomes disqualified under section 436 to become or

remain a receiver —

(a) remove the receiver from office ; or

(b) order that the person may be appointed to act or

may continue to act as a receiver, notwithstanding

the provisions of section 436.

356 Companies Act, No. 07 of 2007

(5) If it is shown to the satisfaction of the court that a

person is unfit to act as a receiver by reason of —

(a) persistent failures to comply ; or

(b) the seriousness of a failure to comply,

the court shall make in relation to that person, a prohibition

order for a period not exceeding five years.

(6) A person to whom a prohibition order applies shall

not—

(a) act as a receiver in any receivership ;

(b) act as a liquidator in any winding up ; or

(c) act as an administrator under Part XIII.

(7) In making an order under this section, the court may,

if it thinks fit —

(a) make an order extending the time for compliance ;

(b) impose any term or condition ;

(c) make any other ancillary order.

(8) A copy of every order made under subsection (5) shall,

within ten working days of the order being made, be delivered

by the applicant to the Registrar who shall keep it on a public

file indexed by reference to the name of the receiver concerned.

(9) Evidence that on two or more occasions within the

preceding five years —

(a) a court has made an order to comply under this

section in respect of the same person ; or

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(b) an application for an order to comply under this

section has been made in respect of the same person,

and that in each case the person has complied after

the making of the application and before the hearing,

is, in the absence of special reasons to the contrary, evidence

of persistent failures to comply for the purposes of this

section.

(10) For the purpose of this section, “failure to comply”

in relation to a receiver means, a failure by a receiver to

comply with a relevant duty, arising—

(a) under the instrument or the order of the court by or

under which the receiver was appointed ; or

(b) under this or any other Act or rule of law or Rules of

Court ; or

(c) under any order or direction of the court, other than

an order to comply made under that section,

and “comply”, “compliance”, and “failed to comply” shall

have corresponding meanings.

469. The court may on making an order that removes or Orders

has the effect of removing a receiver from office, make such protecting

property in

orders as it thinks fit — receivership.

(a) for preserving the property in receivership ;

(b) requiring the receiver for that purpose to make

available to any person specified in the order, any

information and documents in the possession or

under the control of the receiver.

358 Companies Act, No. 07 of 2007

REFUSAL TO SUPPLY ESSENTIAL SERVICES

Refusal to 470. (1) For the pruposes of this section, an “essential

supply essential

service” means —

services

prohibited.

(a) the retail supply of electricity ;

(b) the supply of water ; and

(c) telecommunications services.

(2) Notwithstanding the provisions of any other written

law to the contrary or any contract, a supplier of an essential

service shall not —

(a) refuse to supply the service to a receiver or to the

owner of property in receivership, by reason of the

grantor’s default in paying charges due for the

service in relation to a period before the date of the

appointment of the receiver ; or

(b) make it a condition of the further supply of the

service to a receiver or to the owner of property in

receivership, that payment be made of outstanding

charges due for the service in relation to a period

before the date of the appointment of the receiver.

(3) For the avoidance of doubt, nothing in this section shall

prevent the supplier of an essential service from exercising

any right or power under any contract or under any written

law, in respect of a failure by a company to pay charges due

for the service in relation to any period, after the

commencement of the liquidation.

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PART XVI

REGISTRAR-GENERAL OF COMPANIES AND REGISTRATION

APPOINTMENT OF OFFICERS

471. (1) There may be appointed— Appointment of

officers.

(a) a person by name or by office, to be or to act as the

Registrar-General of Companies ;

(b) persons by name or by office, to be or to act as Deputy

Registrar-Generals of Companies ;

(c) persons by name or by office, to be or to act as

Assistant Registrar-Generals of Companies ; and

(d) such other officers and servants as may from time to

time be required for the purposes of this Act.

(2) Any person appointed under subsection (1) as a Deputy

Registrar-General of Companies or an Assistant Registrar-

General of Companies may, subject to the general directions

of the Registrar, exercise all the powers, perform all the duties

and discharge all the functions of the Registrar under this

Act.

Appeals from

472. (1) A person who is aggrieved by an act or decision Registrar’s

decisions.

of the Registrar may appeal to the court within fifteen working

days after the date of receiving notice of the act or decision,

or such further time as the court may allow.

(2) The court may on an appeal made under this section,

confirm, revise, modify or set aside the act or decision against

which the appeal is made and make any order as the interest

of justice may require.

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REGISTERS AND REGISTRATION OF DOCUMENTS

Registers to be 473. (1) The Registrar shall establish and maintain a

kept. Register containing a record—

(a) of companies registered or deemed to be registered

under this Act ; and

(b) of overseas companies registered or deemed to be

registered under this Act.

(2) The Register may be kept in such manner as the

Registrar thinks fit, including either wholly or partly by

means of a device or facility that—

(a) records or stores information electronically or by

other means ; and

(b) permits that information to be readily inspected or

reproduced in legible form.

(3) The Minister may make regulations—

(a) identifying or categorizing documents which may be

destroyed by the Registrar under subsection (4) ; and

(b) providing for all such matters as may become

necessary, to give effect to any device or facility

kept by the Registrar under subsection (2) for

recording information.

(4) The Registrar shall have the power to destroy all such

documents prescribed under paragraph (a) of subsection (3).

(5) Where the Registrar reproduces electronically or by

any other means any document prior to its destruction, such

reproduced document shall for all purposes, be treated as it

were the original document, notwithstanding anything in

any law to the contrary.

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(6) Without prejudice to the above provisions of this

section, where any document filed with or in the custody of

the Registrar is damaged or is in danger of becoming illegible,

the Registrar may if he thinks fit, direct a copy to be made of

it, verified and certified in such manner as he may determine,

and that copy shall be substituted for, and shall for all

purposes of this Act be deemed to be, the document which is

damaged or in danger of becoming illegible.

474. The Registrar may direct a seal or seals to be Authentication

prepared for the authentication of documents required for or of documents by

seal.

connected with the authentication of documents required for

or connected with the registration of companies.

475. (1) The Registrar may, subject to the provisions of Registration of

subections (2) and (3), accept and register or record or file— documents,

copies of

documents,

(a) any doument which is by any provision of this Act notices &c.

required or authorised to be registered or recorded

by, or filed with, the Registrar ; and

(b) any document or copy of a document, and any return

or notice, which is by any provision of this Act

required or authorised to be sent, forwarded, given,

delivered, produced or in any way notified to the

Registrar.

(2) Where a document which is received by the Registrar

for registration under this Act—

(a) required to be submitted in the prescribed form is

not in such prescribed form ;

(b) does not comply with the provisions of this Act, or

any regulations made thereunder ;

(c) is not printed or typewritten ;

(d) has not been properly completed ; or

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(e) contains material that is not clearly legible,

the Registrar may refuse to register such document, and in

that event shall request either—

(f) that the document be appropriately amended or

completed and submitted for registration again ; or

(g) that a fresh document be submitted in its place.

Translations of 476. (1) Where any document required to be delivered

documents filed. to the Registrar under this Act is in a language other than an

official language or English, the Registrar may request in

writing the delivery of a printed translation in such language

as may be decided by the Registrar, certified in the prescribed

manner to be a correct translation.

(2) Where a request under subsection (1) has not been

complied with, the Registrar shall take no further action on

such document.

Fees. 477. (1) Regulations may be made under this Act for

prescribing the fees payable to the Registrar for—

(a) the registration of a limited company ;

(b) the registration of an unlimited company ;

(c) the registration of a company limited by guarantee;

(d) the registration of any document required or

authorised to be registered or required to be

delivered, sent, given or forwarded to or filed with,

the Registrar, other than the notices and reports

required to be delivered to the Registrar by a receiver

or manager, an administrator or a liquidator ;

(e) the recording of any fact required or authorised by

this Act to be recorded by the Registrar ;

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(f) the registration of off-shore companies under Part

XI ; and

(g) the registration of overseas companies under Part

XVIII.

(2) Where no special provision is made for the payment

of a fee in respect of the registration, recording or filing of

any document, the fee to be paid to the Registrar in respect of

that registration, recording or filing shall be the same as the

fee for making a record of any fact.

(3) The Registrar may refuse to exercise a power or perform

a function, until the prescribed fee in respect of such function

is paid.

478. Where any expenses or fees payable to the Registrar Recovery of

under this Act are not paid by the person liable to pay them expenses and

fees.

upon demand, the default may be reported to a Magistrate,

and the amount of those expenses or fees shall be recovered

in the same manner as if it were a fine imposed by the

Magistrate, who shall direct that the amount in default be

credited to the Fund.

FUND

479. (1) For the purposes of this Act, there shall be Fund.

established a Fund which shall be maintained in such manner

as the Secretary to the Ministry of the Minister, in

consultation with the Registrar may direct.

(2) There shall be paid into the Fund two-thirds of every

fee or charge prescribed, levied or recovered under this Act

by the Registrar.

(3) One-third of every fee or charge prescribed, levied or

recovered under this Act by the Registrar, shall be paid into

the Consolidated Fund.

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(4) There shall be paid out of the Fund, all sums of money

required to defray any expenditure incurred by the Registrar-

General in the exercise, discharge and performance of his

powers, functions and duties under this Act, and all sums of

money as are required to be paid out of the Fund by or under

this Act or any regulation made thereunder.

(5) The Secretary to the Ministry of the Minister shall as

soon as possible after the end of each financial year, prepare

a report on the administration of the Fund and shall cause to

be maintained a full and appropriate account of the Fund in

respect of each financial year.

(6) The Auditor-General shall audit the accounts of the

Fund in accordance with Article 154 of the Constitution.

INSPECTION AND PRODUCTION OF DOCUMENTS, ENFORCEMENT OF DUTY

OF COMPANIES TO MAKE RETURNS AND THE PRODUCTION AND

INSPECTION OF BOOKS

Inspection, 480. (1) Any person may, on the payment of the

production prescribed fee, inspect—

and evidence

of

documents (a) any document which forms part of the register ; or

kept by

Registrar. (b) particulars of any registered document that have

been entered on any device or facility of the kind

referred to in subsection (2) of section 473.

(2) Any person may on the payment of the prescribed

fee, require the Registrar to provide and certify—

(a) a certificate of incorporation of a company;

(b) a copy of or extract from any other document which

forms part of the Register;

(c) particulars of any registered document that have

been entered on any device or facility of the kind

referred to in subsection (2) of section 473; or

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(d) a copy of or extract from any registered document,

particulars of which have been entered on any device

or facility of the kind referred to in subsection (2) of

section 473.

(3) Nothing contained in the provisions of subsection (1)

or (2) shall apply to—

(a) any report of an inspector appointed under sections

172, 173 or 180, unless the Registrar directs

otherwise;

(b) any financial statements delivered to the Registrar

by a private company under subsection (2) of section

170 or under the Companies Act, No. 17 of 1982,

unless the person applying to inspect the document

or requiring a copy or extract of it, is a shareholder

or creditor of that company ;

(c) a report filed by a receiver or administrator of a

company, unless the person applying to inspect the

document or requiring a copy or extract of it, is a

shareholder or creditor of that company.

(4) No process for compelling the production of any

document kept by the Registrar shall issue from any court,

except with the leave of that court, and any such process

shall state that it is issued with the leave of the court.

(5) A copy of or extract from any document kept and

registered at any of the offices for the registration of companies

in Sri Lanka, certified to be a true copy or extract by the

Registrar, shall in all legal proceedings be admissible in

evidence as of equal validity with the original document.

(6) Any person untruthfully stating himself to be a

shareholder or creditor of a company for the purposes of

subsection (3), shall be guilty of an offence and be liable on

conviction to a fine not exceeding two hundred thousand

rupees.

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Enforcement 481. (1) Where a company has failed to comply with

of duty of

any provision of this Act which requires it to file with, deliver

company to

make returns or send to the Registrar any document or to give notice to

to Registrar. him of any matter, and fails to make good the default within

ten working days from the date of service of a notice on the

company requiring it to do so, the court may on an application

made to the court by the Registrar or any creditor of the

company, make an order directing the company and any

officer of the company to make good the default within such

time as may be specified in the order.

(2) Any order made under subsection (1) may provide

that all costs of and incidental to the application, shall be

borne by the company or by any officer of the company

responsible for the default.

(3) Nothing in this section shall, rejudice the operation

of any enactment imposing penalties on a company or its

officers, in respect of any default to which subsection (1)

applies.

Unlawful 482. Any person who, being or having been employed

disclosure of

in the Department of the Registrar-General, communicates

information

relating to any information relating to any documents filed by a company

companies. under the provisions of this Act with the Registrar, or matters

connected therewith, obtained by him during the course of

his employment in or at the Department of the Registrar-

General, to any person not entitled or authorised to receive

such information, or who makes any other unlawful use of

such information, shall be guilty of an offence and be liable

on conviction to a fine not exceeding five hundred thousand

rupees or to imprisonment for a term not exceeding two years

or to both such fine and imprisonment.

Production 483. (1) Where on an application made to a Magistrate

and in chambers by the Attorney-General, the Registrar or any

inspection of

books where officer of police not below the rank of Assistant

an offence is Superintendent, there is shown to be reasonable cause to

suspected. believe that any person has while an officer of a company,

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committed an offence in connection with the management of

the company’s affairs, and evidence of the commission of the

offence is to be found in any books or papers of or under the

control of the company, an order may be made—

(a) authorising any person named in it to inspect those

books or papers or any of them, for the purpose of

investigating and obtaining evidence of the offence;

or

(b) requiring the secretary of the company or such other

officer of the company as may be named in the order,

to produce those books or papers or any of them to a

person named in the order at a place so named.

(2) The provisions of subsection (1) shall apply in relation

to any books or papers of a person carrying on the business of

banking so far as they relate to the company’s affairs, as it

applies to any books or papers of or under the control of the

company, except that no order of the kind referred to in

paragraph (b) of that subsection, shall be made by virtue of

the provisions of this subsection.

(3) No appeal shall lie from a decision of a Magistrate on

an application made under this section.

484. (1) The Registrar may by written notice, direct any Registrar’s

company to furnish or produce before a date specified in the power to call for

information and

notice —

to inspect books,

registers and

(a) such information relating to the company as the documents.

Registrar may require for the purposes of this Act; or

(b) such information or explanations as the Registrar

may require in respect of any particulars stated in

any return, declaration or other document furnished

by the company—

(i) which have or should have been stated in

any return, declaration or other document

furnished by the company; or

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(ii) which should have been stated in any return

or other document which should have, but

actually has not, been furnished by the

company,

as at the date or dates specified in the notice; and

(c) to produce before a date specified in the notice, any

book, register or other document kept or required to

be kept by the company, in connection with its

business or transactions.

(2) Where a company fails to comply with any direction

given by the Registrar under subsection (1)—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding one

hundred thousand rupees;

(b) every officer of the company who is in default shall

be guilty of an offence and be liable on conviction

to a fine not exceeding fifty thousand rupees.

PART XVII

APPLICATION OFACT TO EXISTING COMPANIES

Application of 485. (1) In the application of the provisions of this Act

Act to existing to existing companies, it shall apply—

companies.

(a) in the case of a limited company other than a

company limited by guarantee, as if the company

has been formed and registered under the provisions

of this Act as a limited company;

(b) in the case of a company limited by guarantee, as if

the company had been formed and registered under

the provisions of this Act as a company limited by

guarantee;

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(c) in the case of a company other than a limited

company, as if the company had been formed and

registered under the provisions of this Act as an

unlimited company; and

(d) in the case of a company which is a people’s company,

as if had been formed and registered under the

provisions of this Act as a limited company.

(2) An existing company which is a private company, shall

continue under this Act as a private company to which Part II

of this Act applies.

(3) An existing company which is an off-shore company,

shall continue under this Act as an off-shore company to

which Part XI of this Act applies.

(4) Any reference express or implied, to the date of

registration of an existing company, shall be construed as a

reference to the date on which the company was first

incorporated under any written law.

(5) An existing company—

(a) which is a private limited company formed and

registered under the Joint Stock Companies

Ordinance 1861, the Joint Stock Banking

Ordinance 1897, and the Companies Ordinance

(Cap. 145) shall be deemed to have changed its

name to include the suffix “ (Pvt) Limited” or the

abbreviation “(Pvt) Ltd.”; and

(b) which is a public listed company, shall be deemed

to have changed its name to include the suffix

“Public Limited Company” or the abbreviation

“PLC”.

(6) (a) The Registrar shall enter the new name on the

register in place of the former name, consequent to the deemed

change of name under the provisions of subsection (5), and

issue a fresh certificate of incorporation including the said

suffix or the said abbreviation, as the case may be, in such

certificate of incorporation.

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(b) Such fresh certificate shall be issued after the Registrar

has assigned a new number in terms of the provisions of

section 487.

Provisions 486. (1) The model articles shall not apply to an existing

relating to company unless it resolves that they shall apply, under

articles of subsection (1) of paragraph (b) of section 15.

existing

companies.

(2) The memorandum of association of an existing

company shall be deemed to form part of the articles of the

company.

(3) The articles of an existing company shall continue to

be the articles of such company for the purposes of this Act,

and where such articles has adopted all or any of the rules set

out in Table A of the First Schedule to the Companies Act,

No. 17 of 1982, those rules shall be deemed to be

incorporated in such articles of the company, as if set out in

full in those articles.

Provisions 487. (1) Subject to the provisions of subsection (2), the

relating to number which an existing company has been assigned by

company

the Registrar for administrative purposes, shall be the

numbers of

existing company number of that company.

companies

&c. (2) Within a period of twelve months from the coming

into operation of this Act, all existing companies shall apply

to the Registrar to assign a new number as its company

number, in a form as may be prescribed by the Registrar. The

new number so assigned shall be entered in the register and

also on the fresh certificate of incorporation to be issued

under the provisions of subsection (6) of section 485.

(3) Where an existing company fails to comply with the

requirements imposed under subsection (2) of this section

within the time specified therein, the Registrar shall cause to

be published the name of such company in a daily newspaper

in the Sinhala, Tamil and English Language, and where such

company continues to fail to comply with those requirements

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thereafter, the Registrar shall, within six months of the

publication of its name in the newspapers, strike off the name

of such company from the register maintained by him under

the provisions of section473.

(4) During the period of six months referred to in

subsection (3), in addition to a director of the company, a

shareholder of such company or a person who has registered

a charge under section 102 or a person who has a money

claim pending before a court or in arbitration proceedings,

shall also be entitled to apply to the Registrar to have a new

number assigned to such company under subsection (2).

(5) Where a company’s name is struck off from the register

under subsection (3), all property and rights whatsoever

vested in or held on trust for the company immediately before

the date on which the name is struck off, (including leasehold

property but not including property held by the company on

trust for any other person), shall vest in and be at the disposal

of the State.

PART XVIII

OVERSEAS COMPANIES

488. For the purposes of this Part of this Act, the Interpretation.

expressions —

“director” in relation to a company, includes any person

in accordance with whose directions or instructions

the directors of the company are accustomed to act;

“overseas company” means any company or body

corporate incorporated outside Sri Lanka, which —

(a) after the appointed date, established a place

of business within Sri Lanka; or

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(b) has, before the appointed date, established a

place of business within Sri Lanka and

continues to have an established place of

business within Sri Lanka on the appointed

date;

“place of business” includes a share transfer or share

registration office;

“registered overseas company” means an overseas

company which has delivered or is deemed to have

delivered to the Registrar, the documents and

particulars required under section 489; and

“secretary” includes any person occupying the position

of secretary, by whatever name called.

Documents and 489. (1) Every company incorporated outside Sri Lanka

particulars to be which after the appointed date, establishes a place of business

delivered to within Sri Lanka, shall within one month from the date of

Registrar by

establishment of its place of business, deliver to the Registrar

overseas

companies. for purpose of registration—

(a) a certified copy of the charter, statues or

memorandum and articles of the company, or other

instrument constituting or defining the constitution

of the company, and where that instrument is not in

an official language of Sri Lanka or in English, a

translation of that instrument in such language as

may be specified by the Registrar;

(b) a list of the directors of the company, containing

such particulars with respect to the directors as are

by this Act required to be contained with respect to

directors, in the register of the directors of a

company;

(c) the names and addresses of one or more persons

resident in Sri Lanka authorized to accept on behalf

of the company, service of documents and of any

notices required to be served on the company;

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(d) a statement containing the full address of—

(i) the registered or principal office of the

company; and

(ii) the principal place of business of the

company within Sri Lanka ;

(e) a certified copy, certified of recent date, of any

document effecting or evidencing the incorporation

of the company.

(2) The Registrar may upon sufficient cause being shown

by the defaulting company, extend the period of one month

specified in subsection (1).

(3) Every company incorporated outside Sri Lanka which,

on or before the appointed date, establishes or has established

a place of business within Sri Lanka shall, subject to

subsection (4), within a period of one month from that date,

deliver to the Registrar for registration, the documents and

particulars specified in subsection (1).

(4) Where an overseas company has established a place

of business within Sri Lanka before the appointed date, and

has complied with the requirements of Part XIII of the

Companies Act, No. 17 of 1982 in relation to the delivery to

the Registrar, of documents and particulars —

(a) such company shall be deemed to have complied

with subsection (3); and

(b) the Registrar shall enter on the register of overseas

companies, the documents and particulars delivered

under Part XIII of the Companies Act, No. 17 of

1982, and issue a certificate of registration to such

overseas company.

(5) The Registrar may upon receipt of the documents

referred to in subsections (1) or (3), as the case may be, register

the company as a registered overseas company and enter its

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name in the register of overseas companies. A certificate of

registration shall be issued to every registered overseas

company, upon its registration.

(6) The Registrar may extend the period of one month

referred to in subsection (3), if it appears to him expedient to

do so having regard to the circumstances of any particular

case.

(7) A company incorporated outside Sri Lanka shall not

establish a place of business within Sri Lanka or be registered

as an overseas company, where the business being carried on

by that company does not conform to the stipulations made

by or under the Exchange Control Act.

Power of 490. A registered overseas company shall have the same

overseas power to hold lands in Sri Lanka, as if it were a company

companies to incorporated under this Act.

hold lands.

Return to be 491. Where in the case of a registered overseas company,

delivered to any alteration is made in—

Registrar where

documents &c.

altered. (a) the charter, statutes, or memorandum and articles of

the company or any other instrument constituting

or defining the constitution of the company;

(b) the directors of the company or the particulars

contained in the list of the directors;

(c) the names and addresses of the persons authorised

to accept service on behalf of the company; or

(d) the address of —

(i) the registered or principal office of the

company; or

(ii) the principal place of business of the

company within Sri Lanka,

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the company shall, within the prescribed time, deliver to the

Registrar for registration, a return containing the prescribed

particulars of the alteration.

492. (1) Every registered overseas company shall in Financial

every calendar year prepare financial statements, and where statements of

overseas

the company is a holding company, group financial

company.

statements, in such form and containing such particulars and

including such documents, as under the provisions of this

Act (subject however to any prescribed exceptions) it would,

if it had been a company of the same description within the

meaning of this Act, have been required to prepare and deliver

certified copies of those documents to the Registrar for

registration.

(2) Where any document referred to in subsection (1) is

not in an official language of Sri Lanka or in English, there

shall be annexed to it a translation in a language specified by

the Registrar and certified in the prescribed manner.

493. (1) Where it appears to the Registrar that the Name of

corporate name of a registered overseas company is a name overseas

company.

by which the company, had it been formed under this Act,

would on the relevant date have been precluded from being

registered under section 7 of this Act, or in respect of which a

direction could have been given under subsection (1) of

section 10, the Registrar may serve a notice on that registered

overseas company stating why the name could not have been

registered, or the grounds on which such a direction could

have been given, as the case may be.

(2) No notice under subsection (1) may be served on a

company later than twelve months after the relevant date.

(3) The “relevant date” for the purposes of subsections (2)

and (3) is—

(a) the date on which the overseas company has

complied with the provisions of section 489; or

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(b) if there has been a change in the corporate name of

the overseas company, the date on which notice of

that change was given under section 491.

(4) A registered overseas company on which a notice has

been served under subsection (1) —

(a) may deliver to the Registrar a notice in the prescribed

form, specifying a name approved by the Registrar,

other than its corporate name under which it proposes

to carry on business in Sri Lanka; and

(b) may after that name has been registered, at any time

deliver to the Registrar, a notice in the prescribed

form specifying a name approved by the Registrar,

other than its corporate name, in substitution for the

name previously registered.

(5) The name by which an overseas company is for the

time being registered under subsection (4), shall for all

purposes of the law of Sri Lanka, be deemed to be the name of

the company. The provisions of this subsection—

(a) shall not affect references to the corporate name of

the company in this section;

(b) shall not affect any rights or obligations of the

company or render defective any legal proceedings

by or against the company. Any legal proceedings

that might have been commenced or continued

against the company by its corporate name, may be

commenced or continued against it by the name by

which it is for the time being registered.

(6) The Registrar may withdraw a notice given under

subsection (1), if he is satisfied that it ought not to have been

given, or that the circumstances in which it was given have

changed, and at the time of withdrawal there would not be

any grounds on which such a notice could be given. The

provisions of subsection (7) shall not apply in respect of a

notice that has been withdrawn under this subsection.

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(7) A registered overseas company on which a notice has

been served under subsection (1), shall not at any time after

the expiration of two months from the service of that notice,

(or such longer period as may be specified in the notice)

carry on business in Sri Lanka under its corporate name.

(8) Where a registered overseas company fails to comply

with the requirements of subsection (7)—

(a) the company shall be guilty of an offence and be

liable on conviction to a fine not exceeding two

hundred thousand rupees;

(b) every officer of the company who is in default shall

be guilty of an offence, and be liable on conviction

to a fine not exceeding one hundred thousand

rupees.

494. Every registered overseas company shall— Obligation to

state name and

(a) in every prospectus inviting subscriptions for its particulars of

shares or debentures in Sri Lanka, state the country company.

in which the company is incorporated;

(b) ensure that at every place where it carries on business

in Sri Lanka, the name of the company and the

country in which the company is incorporated are

clearly displayed;

(c) ensure that its name and the name of the country in

which it is incorporated, are clearly stated in—

(i) all business letters of the company;

(ii) all notices and other official publications of

the company;

(iii) all bills of exchange, promissory notes,

endorsements, cheques and orders for money

or goods signed on behalf of the company;

(iv) all invoices, receipts and letters of credit of

the company; and

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(v) all other documents issued or signed by the

company which evidence or create a legal

obligation of the company; and

(d) where the liability of the members of the company

is limited, cause notice of that fact to be clearly

stated in every such prospectus and in all letters and

other documents referred to in paragraph (c), and to

be clearly displayed at every place where it carries

on its business.

Service on 495. (1) Any document or notice required to be served

overseas on a registered overseas company, shall be sufficiently served

company.

if addressed to any person whose name has been delivered to

the Registrar under this Part of this Act, and left at or sent by

post to the address which has been so delivered.

(2) Where—

(a) any registered overseas company has failed to

deliver to the Registrar the name and address of a

person resident in Sri Lanka, who is authorised to

accept on behalf of the company service of

documents or notices; or

(b) at any time, all the persons whose names and

addresses have been so delivered are dead or have

ceased to reside in Sri Lanka or refuse to accept

service on behalf of the company or for any reason

cannot be served,

a document may be served on the company by leaving it at or

sending it by post, to any place of business established by

the company in Sri Lanka.

Registrar to be 496. Where any registered overseas company ceases to

notified when have a place of business in Sri Lanka, it shall forthwith give

company ceases

notice of the fact to the Registrar. As from the date on which

to have place of

business in Sri notice is so given, the obligation of the company to deliver

Lanka. any document to the Registrar shall cease.

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497. (1) An application may be made to the court for Liquidation of

assets in Sri

the winding up of the assets in Sri Lanka of an overseas

Lanka of

company in accordance with Part XII, subject to the overseas

modifications and exclusions set out in the Thirteenth company.

Schedule.

(2) An application may be made under subsection (1),

whether or not the overseas company—

(a) is a registered overseas company;

(b) has given notice under section 496 that it has ceased

to have a place of business in Sri Lanka ; or

(c) has been dissolved or otherwise ceased to exist as a

company, under or by virtue of the laws of any other

country.

498. Where any company to which this Part of this Act Penalties for

applies, fails to comply with any of the provisions of this Part non-compliance.

other than section 493, the company, and every officer or

agent of the company who knowingly and willfully authorises

or permits the default, shall be guilty of an offence and be

liable on conviction to a fine not exceeding fifty thousand

rupees.

499. (1) Where any overseas company has failed to Enforcement of

comply with any provision of this Part of this Act, and fails to duty to comply

make good the default within ten working days from the date with provisions

of this Part.

of service of a notice on the company requiring it to do so,

the court may on an application made to the court by the

Registrar or by any creditor of the company or by any other

person who appears to the court to be interested, make an

order directing the company and any officer of the company

to make good the default within such time as may be specified

in the order.

(2) Any order made under subsection (1) may provide

that, all costs of and incidental to the application, shall be

borne by the company or by any officer of the company

responsible for the default.

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(3) Nothing in this section shall prejudice the operation

of any enactment imposing penalties on a company or its

officers ,in respect of any default referred to in subsection (1).

RESTRICTIONS ON SALE OF SHARES AND OFFER OF SHARE

FOR SALE

Dating of 500. (1) It shall not be lawful for any person to issue,

prospectus and circulate, or distribute in Sri Lanka any prospectus offering

particulars to be

for subscription any shares in or debentures of a company,

contained

therein. incorporated or to be incorporated outside Sri Lanka, whether

the company has or has not established or when formed will

or will not establish a place of business in Sri Lanka, unless

the prospectus is dated and—

(a) contains particulars with respect to the following

matters :—

(i) the instrument constituting or defining the

constitution of the company ;

(ii) the enactments or provisions having the force

of an enactment, by or under which the

incorporation of the company was effected ;

(iii) an address in Sri Lanka where the said

instrument, enactments, or provisions or

copies thereof and if the same are in a

language other than the official language of

Sri Lanka or in English, a translation thereof

in a language specified by the Registrar and

certified in the prescribed manner, can be

inspected ;

(iv) the date on which and the country in which

the company was incorporated ;

(v) whether the company has established a place

of business in Sri Lanka and, if so, the address

of its principal office in Sri Lanka ;

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(b) states the matters specified in Part I of the Fourth

Schedule hereto, and subject to the provisions

contained in Part III, sets out the reports specified in

Part II, of that Schedule :

Provided that the provisions of subparagraphs (i),

(ii) and (iii) of paragraph (a) shall not apply in the

case of a prospectus issued more than two years from

the date on which the company is entitled to

commence business, and in the application of Part I

of the Fourth Schedule hereto for the purposes of this

subsection, paragraph 3 of Part I of such Schedule

shall have effect with the substitution for the reference

to the articles, of a reference to the constitution, of

the company.

(2) Any condition requiring or binding an applicant for

shares or debentures, to waive compliance with any

requirements imposed by virtue of paragraph (a) or paragraph

(b) of subsection (1), or purporting to affect him with notice

of any contract, document, or matter not specifically referred

to in the prospectus, shall be void.

(3) It shall not be lawful for any person to issue to any

person in Sri Lanka a form of application for shares in or

debentures of such a company or intended company as is

referred to in subsection (1), unless the form is issued with a

prospectus which complies with this Part and the issue thereof

in Sri Lanka, does not contravene the provisions of subsection

(1) of section 501 :

Provided that the provisions of this subsection shall not

apply, where it is shown that the form of application was

issued in connection with a bona fide invitation to a person

to enter into an underwriting agreement with respect to the

shares or debentures.

(4) In the event of non-compliance with or contravention

of any of the requirements imposed by paragraphs (a) and (b)

of subsection (1), a director or other person responsible for

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the issue of the prospectus shall not incur any liability by

reason of such non-compliance or contravention, where—

(a) as regards any matter not disclosed, he proves he

was not cognizant thereof ;

(b) he proves that such non-compliance or

contravention arose from a bona fide mistake of

fact on his part ; or

(c) such non-compliance or contravention was in

respect of matters which in the opinion of the court

dealing with the case, were immaterial or were

otherwise such as ought, in the opinion of that court

having regard to all the circumstances of the case,

reasonably to be excused :

Provided that, in the event of failure to include in

a prospectus a statement with respect to the matters

contained in paragraph 17 of the Fourth Schedule

hereto, no director or other person shall incur any

liability in respect of the failure, unless it be proved

that he had knowledge of the matters not disclosed.

(5) The provisions of this section—

(a) shall not apply to the issue to existing members or

debenture holders of a company, of a prospectus or

form of application relating to shares in or debentures

of the company, whether an applicant for shares or

debentures has or does not have a right to renounce

in favour of other persons ; and

(b) except in so far as it requires a prospectus to be

dated, shall not apply to the issue of a prospectus

relating to shares or debentures which are or are to

be in all respects, uniform with the shares or

debentures previously issued,

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but, subject as aforesaid, the provisions of this section shall

apply to a prospectus or form of application whether issued

on or with reference to, the formation of a company or

subsequently.

(6) Nothing in this section shall limit or diminish any

liability which any person may incur under the provisions of

this Act, other than this section.

501. (1) It shall not be lawful for any person to issue, Provisions as to

circulate or distribute in Sri Lanka, any prospectus offering expert’s consent

for subscription shares in or debentures of a company and allotment.

incorporated outside Sri Lanka, whether the company has or

has not established or when formed, will or will not be

established, a place of business in Sri Lanka—

(a) if, where the prospectus includes a statement

purporting to be made by an expert, he has not given

or has before delivery of the prospectus for

registration withdrawn his written consent to the

issue of the prospectus, with the statement included

in the form and context in which it is included, or

there does not appear in the prospectus a statement

that he has given and has not withdrawn his consent

as aforesaid ; or

(b) if the prospectus does not have the effect, where an

application is made in pursuance thereof, of

rendering all persons concerned bound by all the

provisions other than penal provisions of section

47, so far as applicable thereto.

(2) In this section the expression “expert” includes an

engineer, a valuer, an accountant and any other person whose

profession gives authority to a statement made by him, and

for the purposes of this section, a statement shall be deemed

to be included in a prospectus, if it is contained in or in any

report or memorandum appearing on the face of or by reference

incorporated in or issued with, such prospectus.

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Registration of 502. It shall not be lawful for any person to issue, circulate

prospectus. or distribute in Sri Lanka, any prospectus offering for

subscription shares in or debentures of a company

incorporated or to be incorporated outside Sri Lanka, whether

the company has or has not established or when formed will

not estabilsh a place of business in Sri Lanka, unless before

the issue, circulation or distribution of the prospectus in Sri

Lanka, a copy thereof certified by the Chairman of the

company as having been approved by resolution of the

managing body, has been so delivered and there is endorsed

on or attached to the copy—

(a) any consent to the issue of the prospectus required

by the provisions of section 501 ; and

(b) where the person making any report in accordance

with Part II of the Fourth Schedule hereto, have made

therein or have without giving reasons indicated

therein, any such adjustments as are mentioned in

paragraph 30 of that Schedule, a written statement

signed by those persons setting out the adjustments

and giving the reasons therefor.

Penalty for 503. Any person who is knowingly responsible for the

contravention of issue, circulation or distribution of prospectus or for the issue

section 500,

section 501 or of a form of application for shares or debentures in

section 502. contravention of any of the provisions of section 500, section

501, or section 502, shall be guilty of an offence and shall on

conviction be liable to a fine not exceeding fifty thousand

rupees.

Civil liability for 504. The provisions of section 41 shall extend to every

misstatements in prospectus offering for subscription shares in or debentures

prospectus.

of a company incorporated or to be incorporated outside Sri

Lanka, whether the company has or has not established or

when formed will or will not establish a place of business in

Sri Lanka, with the substitution for any reference to section

38, of the reference to section 501.

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505. (1) Where any document by which shares in or Interpretation of

debentures of a company incorporated outside Sri Lanka are provisions as to

prospectuses.

offered for sale to the public would, where the company

concerned had been a company within the meaning of this

Act, have been deemed by virtue of the provisions of section

43 to be a prospectus issued by the company, that document

shall be deemed to be for the purposes of this Part of this Act,

a prospectus issued by the company.

(2) An offer of shares or debentures for subscription or

sale to any person, whose ordinary business it is to buy or sell

shares or debentures, whether as principal or agent, shall not

be deemed to be an offer to the public for the purposes of this

Part.

(3) In this Part, the expressions “prospectus”, “shares” and

“debentures” shall have the same meanings as and when used

in relation to a company incorporated under this Act.

PART XIX

ADVISORY COMMISSION

506. (1) For the purposes of advising the Minister on Appointment

any matters in relation to the law relating to companies, the &c. of Advisory

Commission.

Minister may—

(a) constitute a Commission (hereinafter referred to as

the “Advisory Commission”) consisting of not less

than five and not more than ten persons with suitable

qualifications ; and

(b) appoint one of such persons to be Chairman of the

said Advisory Commission.

(2) It shall be the duty of the Advisory Commission—

(a) to inquire into and report to the Minister on any

matter or question relating to companies and the

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law applicable to companies, which may be referred

to it from time to time by the Minister ;

(b) to review the law relating to companies from time to

time and to make proposals to the Minister for the

alteration, modification or addition to such law ;

(c) in making the recommendations referred to in

paragraph (a) or (b), to consult and take into

consideration where the Advisory Commission

deems necessary, the views of trade chambers,

professional organisations, monetary institutions,

governmental authorities and the general public.

(3) The Registrar shall be an ex-officio member of the

Advisory Commission, and shall also function as its Convener

and Secretary.

(4) Subject to the provisions of subsections (6), (7) and

(8), the term of office of the members of the Advisory

Commission shall be three years :

Provided that a member appointed in place of a member

who resigns or is removed or otherwise vacates office, shall

hold office for the unexpired part of the term of office of the

member whom he succeeds.

(5) Any member of the Advisory Commission who vacates

office by effluxion of time, shall be eligible for re-

appointment.

(6) A member of the Advisory Commission may resign

from office by letter to that effect addressed to the Minister.

(7) All members of the Advisory Commission shall hold

office during good behaviour, and may be removed from

office by the Minister.

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(8) Where a member is temporarily unable to discharge

the duties of his or her office on account of ill-health, absence

from Sri Lanka or any other cause, the Minister may appoint

some other person to act as a member in his or her place.

(9) The Advisory Commission may, with the approval of

the Minister, appoint such officers and servants as it thinks

fit to assist the Advisory Commission in carrying out its duties

under this Part of this Act.

(10) The members of the Advisory Commission, its

Secretary and other officers and servants may be paid such

remuneration out of the Fund, as may be determined by the

Minister.

PART XX

COMPANIES DISPUTES BOARD

507. (1) The Minister may constitute a board (in this Companies

Act referred to as the “Companies Disputes Board”) for the Disputes Board.

purposes of carrying out the functions conferred on such

Board by the provisions of this Part of this Act.

(2) The Companies Disputes Board shall consist of not

less than three and not more than five persons appointed by

the Minister, with substantial experience in relation to the

law relating to companies or the administration of companies.

(3) The Minister may appoint one of the members of the

Companies Disputes Board to be the President of the Board.

(4) Subject to the provisions of subsections (6), (7) and

(8), the term of office of the members of the Companies

Disputes Board shall be five years :

Provided that a member appointed in place of a member

who resigns or is removed or otherwise vacates office, shall

hold office for the unexpired part of the term of office of the

member whom he succeeds.

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(5) Any member of the Companies Disputes Board who

vacates office by effluxion of time, shall be eligible for re-

appointment.

(6) A member of the Companies Disputes Board may

resign from office by letter to that effect addressed to the

Minister.

(7) A member of the Companies Disputes Board shall hold

office during good behaviour, and may be removed from office

by the Minister.

(8) Where a member is temporarily unable to discharge

the duties of his office on account of ill-health, absence from

Sri Lanka or any other cause, the Minister may appoint some

other person to act as a member in his place.

(9) The Companies Disputes Board may, with the approval

of the Minister, appoint such officers and servants as it thinks

fit to assist the Companies Disputes Board in carrying out its

duties under this Part of this Act.

(10) The members of the Companies Disputes Board and

its officers and servants may be paid such remuneration out

of the Fund, as may be determined by the Minister.

Board members 508. (1) The parties to a dispute—

may mediate

disputes.

(a) arising in giving effect to the provisions of this Act;

or

(b) which relates to the affairs or management of any

company,

may, with the approval of the President of the Companies

Disputes Board, refer the dispute for mediation before a

member of the Board.

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(2) A court may if it thinks fit, refer any proceeding

pending before such court to mediation before a member of

the Companies Disputes Board, with the consent of all parties

to that proceeding. The proceedings shall be stayed until

either a settlement is reached or a notice is given to the court

by such Board, that the mediation has not resulted in a

settlement.

(3) Where the parties to a dispute or proceeding referred

to mediation under this section agree to settle that dispute or

proceeding—

(a) the settlement agreement shall be recorded in writing

and signed by the parties and by the member of the

Board who acted as mediator ; and

(b) a certified copy of the settlement agreement shall

be filed in the court, and shall have effect as if it

were a judgment of the court.

(4) Regulations may be made prescribing the procedure

for the conduct of proceedings in any dispute referred to

mediation under this section.

(5) Where the parties to a dispute or proceeding referred

to mediation under this section do not agree to settle that

dispute or proceeding within three months of the reference to

mediation, or within any extended period agreed to by all

those parties, the member of the Board shall forthwith give

notice—

(a) to the parties ; and

(b) if the matter was referred to mediation by the court,

to the court,

that the mediation has not resulted in a settlement.

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Privilege in 509. All statements made in the course of or in relation

respect of to a mediation before a member of the Companies Disputes

mediations

proceeding. Board—

(a) shall be deemed to be made for the purposes of

arriving at a settlement of the dispute or proceeding

referred to mediation ;

(b) shall not be disclosed to any person other than the

parties to the mediation and their legal advisers,

without the consent of all parties to the mediation ;

(c) shall not be admissible in evidence in any civil or

criminal proceedings without the consent of all

parties to the mediation.

Fees payable 510. (1) Where a matter is referred to mediation under

in respect of section 508, the parties shall pay to the Companies Disputes

mediation.

Board such amount in respect of the costs incurred and such

fee as may be agreed to by the President of the Board and the

parties to the mediation. The parties shall, subject to any

agreement to the contrary, bear the costs and the fee payable

equally.

(2) Subject to subsection (3), all amounts payable under

this section shall be credited to the Fund established under

this Act.

(3) The President may direct that any fee payable under

this section in respect of a mediation, shall be paid by the

Board in whole or in part, to the member of the Board who

acted as mediator.

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PART XXI

OFFENCES

MISCELLANEOUS OFFENCES

511. Where in any return, report, certificate, balance Penalty for false

sheet or other document, required by or for the purposes of statement.

this Act, any person wilfully makes a statement which is false

in any material particular knowing it to be false, shall be

guilty of an offence and be liable on conviction to a fine not

exceeding one million rupees or to imprisonment for a term

not exceeding five years or to both such fine and

imprisonment.

512. (1) Any person who, with intent to defraud or Penalty for

deceive a person— falsification of

records.

(a) destroys, parts with, mutilates, alters or falsifies, or

is a party to the destruction, mutilation, alteration

or falsification of any register, accounting records,

book, paper or other document belonging or relating

to a company ; or

(b) makes or is a party to the making of a false entry in

any register, accounting records, book, paper or other

document belonging or relating to a company,

shall be guilty of an offence and be liable on conviction to a

fine not exceeding one million rupees or to a term of

imprisonment not exceeding five years or to both such fine

and imprisonment.

513. Where any person or persons or trade carry on Penalty for

business under any name or title of which “Limited” or any improper use of

word “Limited”.

contraction or imitation of that word is the last word, that

person or those persons shall, unless duly incorporated with

limited liability, be guilty of an offence and shall be liable

on conviction to a fine not exceeding fifty thousand rupees.

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GENERAL PROVISIONS AS TO OFFENCES

Compounding 514. (1) Where any company has made default in

of certain

complying with any provision of this Act requiring it to file

offences.

with or deliver or send to the Registrar any account, document

or return or to give notice to him of any matter, and has by

reason of such default committed an offence under this Act,

the Registrar may, if he thinks fit, instead of instituting

proceedings in court or where such proceedings have already

been instituted, instead of continuing such proceedings

against the company or any officer of the company in respect

of such offence, accept from the company or the officer, such

sum of money as the Registrar may think proper in

composition of the offence. Any sum so accepted shall be

credited to the Fund estabilshed under this Act.

(2) Where the Registrar has accepted any sum of money

under subsection (1) in composition of any offence,

proceedings shall not be taken against the company or any

officer of the company in respect of that offence or if already

taken, shall not be continued.

(3) Where any sum of money payable in composition of

an offence under the provisions of subsection (1) remains

unpaid for a period of one month from the date fixed for its

payment by the Registrar, or such extended time as the

Registrar may allow, the Registrar may report the default in

payment to a Magistrate. The amount unpaid shall be

recovered from the company or any officer of the company in

respect of the default, in the same manner as if it were a fine

imposed by the court, and the court shall direct that the amount

in dafault be credited to the Fund.

Offences 515. Notwithstanding anything contained in any other

summarily law to the contrary, all offences under this Act may be tried

triable.

summarily by a Magistrate.

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516. (1) A fine may be imposed by a court for any Imposition and

offence under this Act, notwithstanding that the fine exceeds application of

fines.

the amount of the fine which the court may impose in the

exercise of its ordinary jurisdiction.

(2) The court imposing any fine under this Act, may direct

that the whole or any part of it shall be applied in or towards

payment of the costs of the proceedings or in or towards

rewarding the persons on whose information or at whose suit

the fine is recovered.

517. Nothing in this Act relating to the institution of Savings as to

criminal proceedings by the Attorney-General, shall be taken private

prosecutors.

to preclude any person from instituting or carrying on any

such proceedings.

518. Where proceedings are instituted under this Act Savings for

against any person by the Attorney-General, nothing in this privileged

communications.

Act shall be taken to require any person who has acted as

attorney-at-law for the accused, to disclose any privileged

communication made to him in that capacity.

PART XXII

MISCELLANEOUS

PROHIBITION OF PARTNERSHIP WITH MORE THAN TWENTY MEMBERS

519. (1) No company, association or partnership consisting Prohibition of

of more than twenty persons shall be formed for the purpose partnership with

more than

of carrying on any business that has for its object the

twenty

acquisition of gain by the company, association or members.

partnership, or by its individual members, unless it is

registered as a company under this Act or under some other

enactment.

(2) No company, association or partnership consisting of

more than twenty persons, which is formed outside Sri Lanka,

shall carry on in Sri Lanka any business that has for its object

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the acquisition of gain by the company, association or

partnership or by its individual members, unless—

(a) it is duly incorporated as a company outside Sri

Lanka ; and

(b) has an established place of business within Sri

Lanka.

(3) Nothing in subsection (1) or (2) shall apply to—

(a) a partnership formed for the purpose of carrying on

practice as attorneys-at-law, consisting of persons

each of whom is an attorney-at-law ;

(b) a partnership formed for the purpose of carrying on

practice as accountants, consisting of persons each

of whom is a chartered accountant ;

(c) a pertnership formed for the purpose of carrying on

practice as members of a licensed stock exchange,

consisting of persons each of whom is a member of

that licensed stock exchange ;

(d) a partnership formed for any purpose that may be

prescribed, consisting of such persons as may be

prescribed.

(4) Where any company, association or partnership

consisting of more than twenty persons is formed in

contravention of the provisions of subsection (1) or carries

on any business in contravention of the provisions of

subsection (2), each of those persons—

(a) shall be guilty of an offence and be liable on

conviction to a fine not exceeding fifty thousand

rupees;

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(b) shall, without prejudice to paragraph (a), be

severally liable for the payment of the whole of the

debts of the company, association or partnership of

which he is or was a member, may be sued

accordingly without joining in the suit any other

member of the company, association or partnership.

APPLICATION AND REFERENCE TO COURT

520. (1) Every application or reference to court under Procedure.

the provisions of this Act shall, unless otherwise expressly

provided or unless the court otherwise directs, be by way of

petition and affidavit, and every person against whom such

application or reference is made, shall be named a respondent

in the petition and be entitled to be given notice of the same

and to object to such application or reference.

(2) Every application or reference made to the court in

the course of any proceeding under this Act or incidental

thereto, shall be made by motion in writing.

(3) The Registrar shall be entitled to be heard or

represented in any application or reference made to the court

under this Act at any stage of such application or reference.

(4) In all proceedings before court by way of application

or reference under this Act, no order for costs shall be made

against the Registrar.

521. (1) Subject to the provisions of subsections (2) Grant of

and (3), pending the making of a final order in any application isnterim relief.

or reference to court made under this Act, the court may on

the application of a party to the proceedings, make such

interim order, including a restraining order, as it thinks fit.

Such order may at the discretion of the court, be made ex-

parte or after notice to the respondent. The respondent may

make an application for an order of revocation or variation of

the ex-parte order, with notice to the petitioner.

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(2) The court shall not grant a restraining order or any

other form of interim order under this Act on the application

of a shareholder, former shareholder or a director, unless the

applicant has first lodged with the court an undertaking in

writing that if the order sought is granted, and the company

or any other person suffers loss or damage which the court

considers as just and equitable for the applicant to bear, the

applicant will indemnify the company or other person against

that loss or damage.

(3) The court shall, before or at the time of granting a

restraining order or any other form of interim order, fix the

amount of security which the applicant shall provide for the

undertaking given under subsection (2). Security may be

provided by depositing funds with the court or by providing

a bank guarantee or in such other manner as the court may

consider sufficient.

(4) The court may from time to time, on the application

of the company or any other person who may suffer loss or

damage as a consequence of the making or continuation in

force of an interim order, increase the amount of security to

be provided by the applicant for the undertaking given under

subsection (2). Where an order for an increase in the amount

of security to be provided is made, it shall be a condition of

the continuation of the interim order, that the increased

security be provided within a period specified by the court.

(5) The court may make such orders as it think just and

equitable—

(a) by way of enforcement of an undertaking given

under subsection (2) ;

(b) for the payment out to any person of funds

deposited as security under subsection (3) ;

(c) for the investment in an interest bearing bank

account, of any funds deposited as security under

subsection (3).

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522. Nothing in this Act shall require disclosure by any Savings for

person to the Registrar or to an inspector appointed by the attorney-at-law

and bankers.

Registrar—

(a) of any information which he would in proceedings

in a court be entitled to refuse to disclose on grounds

of legal professional privilege, except if he is an

attorney-at-law, the name and address of his client;

or

(b) unless the court orders otherwise, by a company’s

bankers, of any information as to the affairs of any

of their customers other than the company.

523. A document may be served on a company— Service of

documents on

(a) by leaving it at or sending it by post to the registered company.

office of the company ;

(b) by delivering it or sending it by post to any director,

secretary, manager or other officer of the company;

or

(c) if for any reason it cannot be served as aforesaid, on

such director, secretary, manager or other officer, by

delivering it or sending it by post or by serving it in

such manner as may be ordered by the court.

524. Any document purporting to be made or furnished Documents to

for the purposes of this Act by or on behalf of a company or be received in

evidence.

by any person, shall for all purposes be, until the contrary is

proved, deemed to have been made or furnished by such

company or person, as the case may be. Any person signing

any such document shall be deemed to be cognizant all

matters therein.

525. Where a limited company is plaintiff in any action Costs in action

or other legal proceeding, any judge having jurisdiction in by certain

limited

the matter may, where it appears by credible testimony that companies.

there is reason to believe that the company will be unable to

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pay the costs of the defendant if successful in his defence,

require sufficient security to be given for those costs, and

may stay all proceedings until the security is given.

Power of court 526. (1) Where in any proceeding for negligence,

to grant relief in default, breach of duty, or breach of trust against an officer of

certain cases.

a company or a person employed by a company as auditor

(whether he is or not an officer of the company), it appears to

the court hearing the case that the officer or person is or may

be liable in respect of the negligence, default, breach of duty

or breach of trust, but that he has acted honestly and

reasonably, and that having regard to all the circumstances

of the case, including those connected with his appointment,

he ought fairly to be excused for the negligence, default,

breach of duty or breach of trust, that court may relieve him,

either wholly or partly, from his liability on such terms as the

court may think fit.

(2) Where any such officer or person referred to in

subsection (1) has reason to apprehend that, any claim will or

might be made against him in respect of any negligence,

default, breach of duty or breach of trust, he may apply to the

court for relief, and the court on any such application shall

have the same power to relieve him as under this section it

would have had, if it had been a court before which

proceedings against that person for negligence, default,

breach of duty or breach of trust has been brought.

Regulations. 527. (1) The Minister may make regulations for or in

respect of all matters which are stated or required by this Act

to be prescribed or for which regulations are required or

authorised by this Act to be made.

(2) Every regulation made by the Minister shall be

published in the Gazette and shall come into operation on

the date of such publication or on such later date as may be

specified in the regulation.

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(3) Every regulation made by the Minister shall as soon

as convenient after its publication in the Gazette, be brought

before Parliament for approval. Any regulation which is not

so approved shall be deemed to be rescinded as from the date

of disapproval, but without prejudice to anything previously

done thereunder. Notification of the date on which any

regulation is so deemed to be rescinded, shall be published

in the Gazette.

528. In the event of any inconsistency between the Sinhala text to

Sinhala and Tamil texts of this Act, the Sinhala text shall prevail in case

of inconsistency.

prevail.

529. (1) In this Act, unless the context otherwise Interpretation.

requires—

“accounting period” means in relation to any body

corporate, the period in respect of which the financial

statements of such body corporate are made up,

whether the said period is a year or not;

“agent” does not include any person’s attorney-at-law

acting as such ;

“annual return” means the return required to be made by

a company under section 131;

“articles” means articles of association of a company as

originally framed or as altered by special resolution,

including so far as they apply to the company, the

regulations contained in Part C of the Schedule to

the Joint Stock Companies Ordinance, 1861 or in

Table B in the Schedule to the Joint Stock Banking

Ordinance, 1897 or in Table A in the First Schedule

to the Companies Ordinance (Cap. 145) or in Table

A in the First Schedule to the Companies Act, No.

17 of 1982, or the model articles ;

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“balance sheet date” means the close of the 31st day of

March or of such other date as the Board of the

company has adopted as the company’s balance

sheet date and the notification of which is given

forthwith to the Registrar ;

“board” and “board of directors” in relation to a company,

means —

(a) directors of the company who number not less

than the required quorum acting together as a

board of directors ; or

(b) if the company has only one director, that

director ;

“book and paper” and “book or paper” includes

accounts, deeds, writings and documents ;

“certified” means certified in such manner as may be

prescribed, or if no manner of certification is

prescribed in relation to any document or class of

documents, in such manner as the Registrar may

require ;

“class” means a class of shares having attached to them

identical rights, privileges, limitations and

conditions ;

“company” means a company incorporated under this

Act or an existing company ;

“the court” means a High Court established under Article

154P of the Constitution for a Province, empowered

with civil jurisdiction by Order published in the

Gazette under section 2 of the High Court of the

Provinces (Special Provisions) Act, No. 10 of 1996,

within the Province for which such High Court is

established, or where no such High Court vested

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with such civil jurisdiction is established for any

Province, the High Court established for the Western

Province;

“debenture” includes debenture stock, bonds and any

other securities of a company, whether constituting

a charge on the assets of the company or not ;

“director” includes—

(a) a person occupying the position of director of

the company, by whatever name called ;

(b) for the purposes of sections 187, 188, 189,

190, 197, 374 and 377—

(i) a person in accordance with whose

directions or instructions a person referred

to in paragraph (a) may be required or is

accustomed to act ;

(ii) a person in accordance with whose

directions or instructions the board of the

company may be required or is

accustomed to act ; and

(iii) a person who exercises or who is entitled

to exercise or who controls or who is

entitled to control the exercise of powers

which, apart from the articles of the

company, would be required to be

exercised by the board ; and

(c) for the purposes of sections 187 to 195 (both

inclusive), 197, 374 and 377, a person to

whom a power or duty of the board has been

directly delegated by the board with that

person’s consent or acquiescence, or who

exercises the power or duty with the consent

or acquiescence of the board.

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The provisions of paragraphs (b) and (c) shall not apply to

a person to the extent that the person acts only in a

professional capacity;

“distribution” means—

(a) the direct or indirect transfer of money or property,

other than the shares of a company, to or for the

benefit of a shareholder ; or

(b) the incurring of a debt to or for the benefit of a

shareholder,

in relation to a share or shares held by that shareholder,

whether by means of a payment of a dividend, a

redemption or other acquisition of the share or shares, a

distribution of indebtedness or otherwise ;

“dividend” shall have the same meaning as given in

section 60 ;

“document” means a document in any form,

including—

(a) any writing on material ;

(b) information recorded or stored by means of a

tape recorder, computer, or other device and

material subsequently derived from

information so recorded or stored ;

(c) a book, graph, or drawing ; and

(d) a photograph, film negative, tape or other

device in which one or more visual images

are embodied so as to be capable (with or

without the aid of equipment) of being

reproduced ;

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“employees’ share scheme”, in relation to a company,

means a scheme for encouraging or facilitating

the holding of shares in the company by or for the

benefit of—

(a) the bona fide employees or former employees

of the company or any related company ; or

(b) the wives, husbands, widows, widowers or

children or step-children of such employees

or former employees ;

“existing company” means, a company formed and

registered under the Joint Stock Companies

Ordinance, 1861, or the Joint Stock Banking

Ordinance, 1897, the Companies Ordinance (Cap.

145), or the Companies Act, No. 17 of 1982 ;

“financial statements” means—

(a) a balance sheet for the company as at the

balance sheet date ; and

(b) in the case of—

(i) a company trading for profit, a profit and

loss statement for the company in relation

to the accounting period ending at the

balance sheet date ; and

(ii) a company not trading for profit, an

income and expenditure statement for the

company in relation to the accounting

period ending at the balance sheet date,

together with any notes or documents giving

information relating to the balance sheet or

statement ;

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“Fund” means, the Fund established under section 479;

“group financial statements” means—

(a) a consolidated balance sheet for the group as

at that balance sheet date ;

(b) where a member of the group trades for profit,

a consolidated profit and loss statement for

the group in relation to the accounting period

ending at that balance sheet date ; and

(c) where no member of the group trades for profit,

a consolidated income and expenditure

statement for the group, in relation to the

accounting period ending at that balance sheet

date,

together with any notes or documents giving

information relating to the balance sheet or

statement;

“holding company”, a company shall beodeemed to

be another company’s holding company, if and

only if that other company is its subsidiary. For

the purpose of this definition “company” includes

any body corporate;

“interest group” in relation to any action or proposal

affecting rights attached to shares, means a group

of shareholders—

(a) whose affected rights are identical; and

(b) whose rights are affected by the action or

proposal in the same way;

“legal representative” means, an executor or

administrator or in the case of an estate not

administrable in law, the next-of -kin who have

adiated the inheritance;

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“listed company” means, a company, any shares or

securities of which are quoted on a licensed stock

exchange;

“licensed commercial bank” means, a company or

institution issued with a licence under the Banking

Act, No. 30 of 1988, to carry on business as a

licensed commercial bank;

“manager” includes, any person occupying the position

of manger by whatever name called;

“minimum subscription” means, the amount stated in

a prospectus as the minimum amount, which in

the opinion of the directors must be raised by the

issue of share capital and reckoned exclusively of

any amount payable otherwise than in cash;

“officer” in relation to a body corporate, includes a

director, manager or secretary;

“ordinary resolution” means, a resolution that is

approved by a simple majority of the votes of those

shareholders entitled to vote and voting on the

question;

“overseas company” shall have the same meaning as

given in section 488;

“prescribed” means, prescribed by regulation;

“prospectus” means, any prospectus, notice, circular,

advertisement, or other invitation, offering to the

public for subscription to or purchase of any shares

or debentures of a company, and includes any such

notice, circular, advertisement, or other invitation,

notwithstanding that it may contain on the face

thereof, that it is not a prospectus or offer of shares

to the public;

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“receiver” means, a receiver of the whole or a part of the

property and undertaking of a company, appointed

under Part XV;

“redeemable” shall have the same meaning as given in

section 66;

“Register” means, the Register required to be kept under

section 473;

“Registrar” means, the Registrar-General of Companies

or other officer performing under this Act, the duty

of registration of companies;

“resolution altering articles” shall have the same meaning

as given in section 15;

“share” means, a share issued by a company;

“share register” means, the register required to be kept

under section 123;

“shareholder” shall have the same meaning as given in

section 86;

“stated capital” shall have the same meaning as given in

section 58;

“subsidiary”, a company shall be deemed to be a

subsidiary of another, if and only if—

(a) that other company either—

(i) controls the composition of its board of

directors ;

(ii) is in a position to exercise or control the

exercise of more than half the maximum

number of votes that can be exercised at

a meeting of the company;

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(iii) hold more than half of the issued shares

of the company, other than shares that

carry no right to participate beyond a

specified amount in a distribution of

profits or capital;

(iv) is entitled to receive more than half of

every dividend paid on shares issued by

the company, other than shares that carry

no right to participate beyond a specified

amount in a distribution of profits or

capital; or

(b) the first-mentioned company is a subsidiary

of any company which is that other company’s

subsidiary.

For the purpose of this definition, the composition of a

company’s board of directors shall be deemed to be controlled

by another company if, and only if, that other company by

the exercise of any power exercisable by it without the

consent or concurrence of any other person, can appoint or

remove all or a majority of the directors, and that other

company shall be deemed to have power to appoint a director,

if—

(a) a person cannot be appointed as a director without

the exercise in his favour by that other company, of

a power to so appoint ; or

(b) a person’s appointment as a director follows

necessarily from his appointment as a director of

that other company.

In determining whether one company is a subsidiary of

another—

(a) any shares held or power exercisable by a company

in a fiduciary capacity shall be treated as not held or

exercisable by it;

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(b) subject to the provisions of paragraphs (c) and (d),

any shares held or power exercisable—

(i) by any person as a nominee for that other

(except where that other is concerned only in

a fiduciary capacity); or

(ii) by or by a nominee for a subsidiary of that

other, not being a subsidiary which is

concerned only in a fiduciary capacity,

shall be treated as held or exercisable by that other;

(c) any shares held or power exercisable by any person

by virtue of the provisions of any debentures of the

first-mentioned company, or of a trust deed for

securing any issue of such debentures, shall be

disregarded;

(d) any shares held or power exercisable by or by a

nominee for that other or its subsidiary (not being

held or exercisable as referred to in paragraph (c)),

shall be treated as not held or exercisable by that

other, if the ordinary business of that other or its

subsidiary, as the case may be, includes the lending

of money, and the shares are held or the power is

exercisable by way of security only, for the purposes

of a transaction entered into in the ordinary course

of that business.

For the purpose of this definition “company” includes a

body corporate; and

“working day” means a day other than Saturday,

Sunday or a public holiday.

(2) For the purposes of this Act, —

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(a) a company is related to another company, if—

(i) that company is the subsidiary or holding

company of the other company;

(ii) the holding company of that company is also

a holding company of the other company; or

(iii) that company is related to a company which

is related to the other company ;

(b) where any section of this Act provides that an officer

of a company who is in default shall be liable to a

penalty, the expression “officer who is in default”

means any director, manager, secretary or other

officer of the company, who knowingly and wilfully

authorizes or permits the default, refusal or

contravention referred to in that section;

(c) (i) one or more groups may exist in relation to

any action or proposal; and

(ii) if—

(A) action is taken in relation to some

holders of shares in a class and not

others; or

(B) a proposal expressly distinguishes

between some holders of shares in a

class and other holders of shares of that

class,

holders of shares in the same class, may fall

into two or more interest groups.

(3) Any reference in this Act—

(a) (i) to the shareholders of a company includes,

in relation to a company which has only one

shareholder, a reference to that shareholder;

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(ii) to the directors of a company includes, in

relation to a company which has only one

director, a reference to that director ;

(b) to a body corporate or to a corporation, shall be

construed as not including a corporation sole but as

including a company incorporated outside Sri

Lanka;

(c) unless the context otherwise requires, to a person

by whom, or in whose interests a receiver was

appointed, includes a reference to a person to whom

the rights and interests under any deed or agreement

by or under which the receiver was appointed, have

been transferred or assigned.

(4) Where public notice of any matter is required to be

given under this Act, that notice shall be given by publishing

a notice of that matter—

(a) in at least one issue of the Gazette; and

(b) in at least one issue of a daily newspaper in the

Sinhala, Tamil and English languages, circulating

in the area in which—

(i) the company’s place of business;

(ii) if the company has more than one place of

business, the company’s principal place of

business; or

(iii) if the company has no place of business or

the location of neither its principal place of

business nor any other place of business is

known to the person required to give the

notice, the company’s registered office,

is situated.

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TRANSITIONAL PROVISIONS AND SAVINGS

530. (1) Without prejudice to the provisions contained Transitional

in sections 5 and 10 of the Interpretation Ordinance— provisions.

(a) nothing in the repeal of any former written law

relating to companies shall affect any order, rule,

regulation, scale of fees, appointment, conveyance,

mortgage, deed or agreement made, resolution passed,

direction given, proceeding taken, instrument issued

or thing done under any former written law relating

to companies, but any such order, rule, regulation,

scale of fees, appointment, conveyance, mortgage,

deed or agreement, resolution, direction, proceeding,

instrument or thing shall, if in force on the appointed

date, continue to be in force, and so far as it could

have been made, passed, given, taken, issued or done

under this Act, shall have effect as if made, passed,

given, taken, issued, or done under the provisions of

this Act;

(b) any document referring to a provision in any former

written law relating to companies, shall be construed

as referring to the corresponding provision

contained in this Act;

(c) any person appointed to any office under or by

virtue of any former written law relating to

companies, shall be deemed to have been appointed

to that office under or by virtue of the provisions of

this Act;

(d) any Register kept under any former written law

relating to companies, shall be deemed part of the

Register to be kept under the corresponding

provisions of this Act;

(e) all funds and accounts constituted under the

provisions of this Act, shall be deemed to be in

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continuation of the corresponding funds and

accounts constituted under the former written law

relating to companies.

(2) In this section the expression “former written law

relating to companies” means any written law repealed by

the Companies Ordinance (Cap. 145) or the Companies Act,

No. 17 of 1982 or this Act.

(3) All actions, proceedings or matters, other than those

referred to in section 532, and pending in a District Court on

the day preceding the date on which this Act came into

operation, shall stand removed to the court as defined in this

Act and such court shall have jurisdiction to take cognizance

of, hear and determine, or continue and complete, the same:

Provided that any such action, proceeding or matter, in

which the adducing of evidence has commenced in the District

Court on the day preceding the date on which this Act came

into operation, shall be heard and determined by the said

District Court.

Savings. 531. Nothing in this Act shall affect—

(a) the incorporation of any company registered under

any written law repealed by the Companies

Ordinance (Cap. 145), Companies Act, No. 17 of

1982 or this Act;

(b) Part C of the Schedule to the Joint Stock Companies

Ordinance, 1861, or any part thereof, so far as the

same applies to any company in existence on the

appointed date;

(c) Table B in the Schedule to the Joint Stock Banking

Ordinance, 1897, or any part thereof, so far as the

same applies to any company in existence on the

appointed date;

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(d) Tables A and C in the First Schedule to the

Companies Ordinance (Cap. 145) or any part thereof,

so far as the same applies to any company in

existence on the appointed date;

(e) Table A and C in the First Schedule to the Companies

Act, No. 17 of 1982 or any part thereof, so far as the

same applies to any company in existence on the

appointed date.

532. (1) Subject to the provisions of subsection (2), the Savings of

provisions of this Act with respect to winding up shall not pending

proceedings for

apply to any company of which the winding up has winding up.

commenced before the appointed date. Every such company

shall be wound up in the same manner and with the same

incidents, as if this Act had not been enacted, and for the

purposes of the winding up, the written law under which the

winding up commenced shall be deemed to remain in full

force.

(2) Where any company is being wound up in accordance

with subsection (1), the court may, on application made by

the Registrar or by any creditor of the company, and where

the court is of opinion that it is expedient to do so in the

circumstances of the case, make order that any specified

provision of this Act with respect to liquidation shall apply

to the winding up of that company, and may give such

incidental or supplemental direction as may appear to the

court to be necessary for the purposes of the application of

such provision. Where the court makes any such order, any

provision of this Act specified in the order shall, subject to

any such directions, apply accordingly.

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PART XXIII

REPEALS ANDAMENDMENTS

Repeals. 533. (1) The Companies Act, No. 17 of 1982 is hereby

repealed.

(2) The Companies (Special Provisions) Law, No. 19 of

1974 and the Foreign Companies (Special Provisions) Law,

No. 9 of 1975 are hereby repealed.

Amendment of 534. The First Schedule to the High Court of the

the First Provinces (Special Provisions) Act, No. 10 of 1996 is hereby

Schedule of Act,

amended by the substitution for item (2) of that Schedule, of

No. 10 of 1996.

the following item :—

“(2) All application and proceedings under the

Companies Act, No. 07 of 2007”.

FIRST SCHEDULE [Section 14]

MODELARTICLES

A. SHARES

1. Issue of shares

(1) Subject to articles 1 (2) and 1 (3), of these articles, the board

may issue such shares to such persons as it thinks fit in accordance with

section 51 of this Act. Where the shares confer rights other than those

specified in subsection (2) of section 49 of this Act, or impose any

obligation on the holder, the board must approve terms of issue which

set out the rights and obligations attached to the shares as required by

subsection (2) of section 51.

(2) Before it issues shares, the board must decide the consideration

for which the shares will be issued. The consideration must be fair and

reasonable to the company and to all existing shareholders.

(3) Where the company issues shares which rank equally with or

prior to existing shares, those shares must be offered to the holders of

the existing shares in a manner which would, if accepted, maintain the

relative voting and distribution rights of those shareholders. The offer

must remain open for acceptance for a reasonable time.

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2. Calls on shares

(1) Where a share imposes any obligation on the holder to pay an

amount of money —

(a) on a fixed date, the holder must pay that amount on that

date;

(b) when called on to do so by the board, the board may at any

time give written notice to the holder requiring the payment

to be made within a specified period of not less than twenty

working days, and the payment must be made in accordance

with that notice.

Any amount not paid by the due date shall carry interest at a rate

fixed by the board not exceeding ten per cent per annum, accruing

daily. The board may waive payment of interest.

(2) Joint holders of a share are jointly and severally liable for any

payments to be made under paragraph (1) of this article.

(3) The company has a lien on every share to which paragraph (a)

of article 1 applies, and on every distribution payable in respect of that

share, for all amounts presently due and payable to the company in

respect of that share.

(4) The company may sell in such manner as the board thinks fit,

any shares on which the company has a lien, if—

(a) the company has given written notice of its intention to do so

to the shareholder; and

(b) the shareholder has failed to make the payment in respect of

which the lien has arisen, within ten working days of the

giving of that notice.

The transfer may be signed on behalf of the purchaser by any

person appointed to do so by the board, and the purchaser shall be

registered as the holder of the shares transferred and his title shall not be

affected by any irregularity or invalidity in the sale.

(5) The proceeds of a sale under paragraph (4) of this article shall

be received by the company and applied first in payment of the costs of

sale, and then in payment of the amount in respect of which the lien

arose. The remainder shall be paid to the person entitled to the shares,

at the time of the sale.

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3. Distributions

(1) The company may make distributions to shareholders in

accordance with section 56 of this Act. Subject to paragraph (2) of this

article, every dividend must be approved by the board and by an

ordinary resolution of the shareholders. The board must be satisfied

that the company will immediately after the distribution, satisfy the

solvency test. The directors who vote in favour of the distribution must

sign a certificate of their opinion to that effect.

(2) The board may from time to time approve the payment of an

interim dividend to shareholders, where that appears to be justified by

the company’s profits, without the need for approval by an ordinary

resolution of the shareholders. The board must be satisfied that the

company will immediately after the interim dividend is paid, satisfy the

solvency test. The directors who vote in favour of the interim dividend

must sign a certificate of their opinion to that effect.

(3) The company is deemed to have satisfied the solvency test if—

(a) it is able to pay its debts as they fall due in the normal course

of business; and

(b) the value of its assets is greater than the sum of the value of

its liabilities and its stated capital.

4. Share register, share certificates and transfer and transmission

of shares

(1) The company must maintain a share register, which complies

with section 123 of this Act. The share register must be kept at the

registered office of the company or at any other place in Sri Lanka,

notice of which has been given to the Registrar in accordance with

subsection (4) of section 124 of this Act.

(2) Where shares are to be transferred, a form of transfer signed by

the holder or by his legal representative shall be delivered to the

company. The transfer must be signed by the transferee if the share

imposes any liability on its holder.

(3) The board may resolve to refuse to register a transfer of a share

within six weeks of receipt of the transfer, if any amount payable to the

company in respect of the share is due but unpaid. If the board resolves

to refuse to register a transfer for this reason, it must give notice of the

refusal to the shareholder within one week of the date of the resolution.

(4) Where a joint holder of a share dies, the remaining holders shall

be treated by the company as the holders of that share. Where the sole

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holder of a share dies, that shareholder’s legal representative shall be

the only person recognised by the company as having any title to or

interest in the share.

(5) Any person who becomes entitled to a share as a consequence

of the death, bankruptcy or insolvency or incapacity of a shareholder

may be registered as the holder of that shareholder’s shares upon making

a request in writing to the company to be so registered, accompanied

by proof satisfactory to the board of that entitlement. The board may

refuse to register a transfer under this article in the circumstances set out

in paragraph (3) of this article.

(6) Where the company issues shares or the transfer of any shares

is entered on the share register, the company must within two moths

complete and have ready for delivery a share certificate in respect of

the shares.

B. MEETINGS OF SHAREHOLDERS

5. Rules relating to meetings of shareholders

A meeting of shareholders may determine its own procedure, to the

extent that it is not governed by these articles.

6. Notice of meetings

(1) Written notice of the time and place of a meeting of shareholders

must be given to every shareholder entitled to receive notice of the

meeting and to every director and the auditor of the company—

(a) not less than fifteen working days before the meeting, if the

company is not a private company and it is intended to

propose a resolution as a special resolution at the meeting;

(b) not less than ten working days before the meeting, in any

other case.

(2) The notice must set out—

(a) the nature of the business to be transacted at the meeting in

sufficient detail to enable a shareholder to form a reasoned

judgment in relation to it; and

(b) the text of any resolution to be submitted to the meeting.

(3) An irregularity in a notice of a meeting is waived if all the

shareholders entitled to attend and vote at the meeting attend the meeting

without protest as to the irregularity, or if all such shareholders agree to

the waiver.

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(4) If a meeting of shareholders is adjourned for less than thirty

days, it is not necessary to give notice of the time and place of the

adjourned meeting, other than by announcement at the meeting which

is adjourned.

7. Methods of holding meetings

A meeting of shareholders may be held either—

(a) by a number of shareholders who constitute a quorum, being

assembled together at the place, date and time appointed for

the meeting; or

(b) by means of audio, or audio and visual communication by

which all shareholders participating and constituting a

quorum, can simultaneously hear each other throughout the

meeting.

8. Quorum

(1) Subject to paragraph (3) of this article, no business may be

transacted at a meeting of shareholders if a quorum is not present.

(2) A quorum for a meeting of shareholders is present if the

shareholders or their proxies are present who are between them able to

exercise a majority of the votes to be cast on the business to be transacted

by the meeting.

(3) If a quorum is not present within thirty minutes after the time

appointed for the meeting, the meeting is adjourned to the same day in

the following week at the same time and place, or to such other date,

time and place as the directors may appoint. If at the adjourned meeting,

a quorum is not present within thirty minutes after the time appointed

for the meeting, the shareholders present or their proxies shall be

deemed to form a quorum.

9. Chairperson

(1) If the directors have elected a chairperson of the board, and the

chairperson of the board is present at a meeting of shareholders, he or

she must chair the meeting.

(2) If no chairperson of the board has been elected or if at any

meeting of shareholders the chairperson of the board is not present

within fifteen minutes of the time appointed for the commencement of

the meeting, the shareholders present may choose one of their number

to be chairperson of the meeting.

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10. Voting

(1) In the case of a meeting of shareholders held under paragraph

(a) of article 7, unless a poll is demanded, voting at the meeting shall be

by whichever of the following methods as determined by the chairperson

of the meeting—

(a) voting by voice; or

(b) voting by show of hands.

(2) In the case of a meeting of shareholders held under paragraph

(b) of article 7, unless a poll is demanded, voting at the meeting shall be

by shareholders signifying individually their assent or dissent by voice.

(3) A declaration by the chairperson of the meeting that a resolution

is carried by the requisite majority is conclusive evidence of that fact,

unless a poll is demanded in accordance with paragraph (4) of this

article.

(4) At a meeting of shareholders, a poll may be demanded by —

(a) not less than five shareholders having the right to vote at the

meeting; or

(b) a shareholder or shareholders representing not less than ten

per centum of the total voting rights of all shareholders

having the right to vote at the meeting.

(5) A poll may be demanded either before or after the vote is taken

on a resolution.

(6) If a poll is taken, votes must be counted according to the votes

attached to the shares of each shareholder present and voting.

(7) The chairperson of a shareholders’ meeting is not entitled to a

casting vote.

11. Proxies

(1) A shareholder may exercise the right to vote either by being

present in person or by proxy.

(2) A proxy for a shareholder is entitled to attend and be heard at

a meeting of shareholders as if the proxy were the shareholder.

(3) A proxy must be appointed by notice in writing signed by the

shareholder. The notice must state whether the appointment is for a

particular meeting, or for a specified term.

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(4) No proxy is effective in relation to a meeting, unless a copy of

the notice of appointment is given to the company not less than twenty-

four hours before the start of the meeting.

12. Minutes

(1) The board must ensure that minutes are kept of all proceedings

at meetings of shareholders.

(2) Minutes which have been signed correct by the chairperson of

the meeting are prima facie evidence of the proceedings.

13. Shareholders proposals

Shareholders entitled to do so may give notice of the resolution to

the company in accordance with section 142 of this Act and it shall be

the duty of the company to give notice of the resolution or circulate the

statement, or both, as the case may be, in accordance with section 142.

The company is not required to give notice of a resolution or circulate

a statement in the circumstances set out in subsections (4) or (5) of

section 142.

14. Corporations may act by representatives

A body corporate which is a shareholder may appoint a

representative to attend a meeting of shareholders on its behalf in the

same manner as it could appoint a proxy.

15. Votes of joint holders

Where two or more persons are registered as the holder of a share,

the vote of the person named first in the share register and voting on a

matter, shall be accepted to the exclusion of the votes of the other joint

holders.

16. Loss of voting right if calls unpaid

If a sum due to a company in respect of a share has not been paid,

that share may not be voted at a shareholders’ meeting other than a

meeting of an interest group.

17. Annual general meetings and extraordinary general meetings

of shareholders

(1) Subject to paragraphs (2) and (3) of this article, the board must

call an annual meeting of the company to be held —

(a) once in each calendar year;

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(b) not later than six months after the balance sheet date of the

company; and

(c) not later than fifteen months after the previous annual

meeting.

The meeting must be held on the date on which it is called to be

held.

(2) The company need not hold its first annual meeting in the

calendar year of its incorporation, but must hold that meeting within

eighteen months of its incorporation.

(3) An extraordinary meeting of shareholders entitled to vote on

an issue may be called at any time by the board, and must be called by

the board on the written request of shareholders holding shares, carrying

not less that ten per centum of votes which may be cast on that issue.

(4) A resolution in writing signed by not less than eighty-five per

centum of the shareholders entitled to vote on the resolution at a meeting

of shareholders, who together hold not less than eighty-five per centum

of the votes entitled to be cast on that resolution, is as valid as if it had

been passed at meeting of those shareholders. The company need not

hold an annual meeting if every thing required to be done at the

meeting (by resolution of otherwise) is done by resolution and is in

accordance with this clause.

(5) Within five working days of a resolution being passed under

paragraph (4) of this article, the company must send a copy of the

resolution to every shareholders who did not sign it.

(6) A resolution may be passed under paragraph (4) of this

article without any prior notice being given to shareholders.

18. Voting in interest groups

Where the company proposes to take action which affects the rights

attached to shares within the meaning of section 99 of this Act, the

action may not be taken unless it is approved by a special resolution of

each interest group, as defined in this Act.

19. Shareholders entitled to receive distributions, exercise pre-

emptive rights, and attend and vote at meetings

(1) The shareholders who are entitled to receive notice of a meeting

of shareholders for any purpose shall be—

(a) if the board fixes a date for the purpose, those shareholders

whose names are registered in the share register on that date;

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(b) if the board does not fix a date for the purpose, those

shareholders whose names are registered in the share register

at the close of business on the day immediately preceding

the day on which the notice is given.

(2) A date fixed under paragraph (1) of this article should not

precede by more than thirty working days, the date on which the

meeting is to be held.

(3) Before a meeting of shareholders, the company may prepare a

list of shareholders entitled to receive notice of the meeting arranged in

alphabetical order, and showing the number of shares held by each

shareholder—

(a) if a date has been fixed under paragraph (1) of this article,

not later than ten working days after that date; or

(b) if no such date has been fixed, at the close of business on the

day immediately preceding the date on which the notice is

given.

(4) A person named in a list prepared under paragraph (3) of this

article is entitled to attend the meeting and vote in respect of the shares

shown opposite his name in person or by proxy, except to the extent

that—

(a) that person has, since the date on which the shareholders

entitled to receive notice of the meeting were determined,

transferred any of his shares to some other person; and

(b) the transferee of those shares has been registered as the

holder of those shares, and has requested before the

commencement of the meeting that his or her name be entered

on the list prepared under paragraph (3) of this article.

(5) A shareholder may examine a list prepared under paragraph

(3) of this article during normal business hours, at the registered office

of the company.

C. DIRECTORS AND SECRETARY

20. Appointment and removal of directors

(1) The shareholders may by ordinary resolution fix the number of

directors of the company.

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(2) A director may be appointed or removed by ordinary resolution

passed at a meeting called for the purpose or by a written resolution in

accordance with paragraph (4) of article 17. Unless the company is a

private company, the shareholders may only vote on a resolution to

appoint a director if—

(a) the resolution is for the appointment of one director; or

(b) the resolution is a single resolution for the appointment of

two or more persons as directors, and a separate resolution

that it be so voted on has first been passed without a vote

being cast against it.

(3) A director may resign by delivering a signed written notice of

resignation to the registered office of the company. Subject to section

208 of this Act, the notice is effective when it is received at the registered

office or at any later time specified in the notice.

(4) A director vacates office if he—

(a) resigns in accordance with paragraph (3) of this article;

(b) is removed from office in accordance with the provisions of

this Act or these articles;

(c) becomes disqualified from being a director pursuant to section

202 of this Act;

(d) dies; or

(e) vacates office pursuant to subsection (2) of section 210 of

this Act, on the ground of his age.

21. Power and duties of directors

(1) Subject to section 185 of the Act which relates to major

transactions, the business and affairs of the company shall be managed

by or under the direction or supervision of the board. The board shall

have all the powers necessary for managing and for directing and

supervising the management of the business and affairs of the company.

(2) The board may delegate to a committee of directors or to a

director or employee any of its’ powers which it is permitted to delegate

under section 186 of this Act.

(3) The directors have the duties set out in the Act, and in particular—

(a) each director must act in good faith and in what he believes

to be the best interest of the company;

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(b) no director shall act or agree to the company to Act, in a

manner that contravenes any provisions of this Act or these

articles.

22. Interested directors

(1) A director who is interested in a transaction to which the company

is a party must disclose that interest in accordance with section 192 of

this Act.

(2) Subject to paragraph (3) of this article, a director of a company

is interested in a transaction to which the company is a party, if, and

only if, the director—

(a) is a party to or will or may derive a material financial benefit

from the transaction;

(b) has a material financial interest in another party to the

transaction;

(c) is a director, officer or trustee of another party to, or person

who will or may derive a material financial benefit from the

transaction, not being a party or person that is—

(i) the company’s holding company, being a holding

company of which the company is a wholly-owned

subsidiary;

(ii) a wholly-owned subsidiary of the company; or

(iii) a wholly-owned subsidiary of a holding company

of which the company is also a wholly-owned

subsidiary;

(d) is the parent, child or spouse of another party to or person

who will or may derive a material financial benefit from the

transaction; or

(e) is otherwise directly or indirectly materially interested in the

transaction.

(3) A director of a company is not interested in a transaction to

which the company is a party, if the transaction comprises only the

giving by the company of security to a third party which has no

connection with the director, at the request of the third party, in respect

of a debt or obligation of the company for which the director or

another person has personally assumed responsibility in whole or in

part, under a guarantee, indemnity or by the deposit of a security.

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(4) Paragraph (2) of this article does not apply to any remuneration

or other benefit given to a director in accordance with section 216 of

the Act, or, to any insurance or indemnity provided in accordance with

section 218 of the Act.

(5) A director of a company who is interested in a transaction

entered into or to be entered into by the company, may—

(a) vote on a matter relating to the transaction;

(b) attend a meeting of directors at which a matter relating to the

transaction arises and be included among the directors present

at the meeting for the purpose of a quorum;

(c) sign a document relating to the transaction on behalf of the

company; and

(d) do any other thing in his capacity as a director in relation to

the transaction,

as if he were not interested in the transaction.

(6) A director of a company who has information in his capacity as

a director or employee of the company which would not otherwise be

available to him, must not disclose that information to any person or

make use of or act on the information, except—

(a) for the purposes of the company;

(b) as required by law; or

(c) in accordance with paragraph (7) of this article.

(7) A director of a company may disclose, make use of or act on

information if—

(a) the director is first authorized to do so by the board under

paragraph (8) of this article; and

(b) particulars of the authorization are entered in the interests

register.

(8) The board may authorize a director to disclose, make use of or

act on information, if it is satisfied that to do so will not be likely to

prejudice the company.

(9) A director must disclose all dealings in shares of the company

in which he has a relevant interest, in accordance with sections 198,

199 and 200 of the Act.

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23. Procedure at meetings of directors

(1) Articles 24 to 30 sets out the procedure to be followed at

meetings of directors.

(2) A meeting of directors may determine its own procedure, to the

extent that it is not governed by these articles.

24. Chairperson

(1) The directors may elect one of their number to be the chairperson

of the board and may determine the period for which the chairperson

is to hold office.

(2) If no chairperson is elected or if at a meeting of the board the

chairperson is not present within five minutes after the time appointed

for the commencement of the meeting, the directors present may choose

one of their number to be chairperson of the meeting,

25. Notice of meeting

(1) A director, the secretary or if requested by a director to do so,

an employee of the company, may convene a meeting of the board by

giving notice in accordance with this article.

(2) Not less than twenty-four hours notice of a meeting of the

board must be given to every director who is in Sri Lanka.

(3) An irregularity in the notice of a meeting is waived if all directors

entitled to receive notice of the meeting attend the meeting without

protest as to the irregularity or if all directors entitled to receive notice

of the meeting agree to the waiver.

26. Methods of holding meetings

A meeting of the board may be held either—

(a) by a number of the directors who constitute a quorum being

assembled together at the place, date and time appointed for

the meeting; or

(b) by means of audio or audio and visual communication by

which all directors participating and constituting a quorum

can simultaneously hear each other throughout the meeting.

27. Quorum

(1) A quorum for a meeting of the board is a majority of the

directors.

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(2) No business may be transacted at a meeting of directors if a

quorum is not present.

28. Voting

(1) Every director has one vote.

(2) The chairperson has a casting vote.

(3) A resolution of the board is passed if it is agreed to by all

directors present without dissent or if a majority of the votes cast on it

are in favour of it.

(4) A director present at a meeting of the board is presumed to

have agreed to and to have voted in favour of a resolution of the board,

unless he or she expressly dissents from or votes against the resolution

at the meeting.

29. Minutes

The board must ensure that minutes are kept of all proceedings at

meetings of the board.

30. Unanimous resolution

(1) A resolution in writing signed or assented to by all directors

entitled to receive notice of a board meeting, is as valid and effective as

if it had been passed at a meeting of the board duly convened and held.

(2) Any such resolution may consist of several documents

(including facsimile or other similar means of communication) in like

form, each signed or assented to by one or more directors.

(3) A copy of any such resolution must be entered in the minute

book of board proceedings.

31. Managing director and other executive directors

(1) The board may form time to time appoint a director as managing

director for such period and on such terms as it thinks fit.

(2) Subject to the terms of a managing director’s appointment, the

board may at any time cancel an appointment of a director as managing

director.

(3) A director who holds office as managing director ceases to

hold office as managing director, if he ceases to be a director of the

company.

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(4) The managing director shall be paid such remuneration as may

be agreed between him and the board. His remuneration may be by

way of salary, commission, participation in profits or any combination

of these methods or any other method of fixing remuneration.

(5) The board may delegate to the managing director, subject to

any conditions or restrictions which they consider appropriate, any of

their powers which can be lawfully delegated. Any such delegation

may at any time be withdrawn or varied by the board. The delegation

of a power of the board to the managing director does not prevent the

exercise of the power by the board, unless the terms of the delegation

expressly provide otherwise.

(6) A director other than the managing director who is employed

by the company shall be paid such remuneration as may be agreed to

between him and the board. His remuneration may be by way of salary,

commission, participation in profits or any combination of these methods

or any other method of fixing remuneration.

32. Secretary

(1) The company must at all times have a secretary.

(2) The board may appoint the secretary for such term and on such

conditions as it thinks fit. The remuneration of the secretary shall be

agreed to by the board and the secretary.

(3) The board may remove the secretary.

(4) The secretary may not be —

(a) the sole director of the company; or

(b) a corporation, the sole director of which is the sole director

of the company.

(5) Where the Act or these articles require something to be done by

a director and the secretary, it is not satisfied by the same person doing

that thing acting in both capacities.

D. ACCOUNTS AND AUDIT

33. Accounting records, financial statements, audit etc.

(1) The board must ensure that the company keeps accounting

records which —

(a) correctly record and explain the company’s transactions;

(b) will at any time enable the financial position of the company

to be determined with reasonable accuracy;

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(c) will enable the board to prepare financial statements in

accordance with this Act; and

(d) will enable the financial statements of the company to be

readily and properly audited.

(2) The accounting records must comply with subsection (2) of

section 148 of this Act.

(3) The board shall ensure that within five months after the balance

sheet date of the company, financial statements which comply with

section 151 of the Act (and if applicable, group financial statements

which comply with section 153 of the Act) are completed in relation to

that balance sheet date and are dated and signed on behalf of the board

by two directors or if the company has only one director, by that

director.

(4) At every annual meeting, the company must appoint an auditor

for the following year in accordance with section 154 of the Act. An

auditor who is appointed at an annual meeting is deemed to be

reappointed at the following annual meeting, unless —

(a) he is not qualified for re-appointment;

(b) the company resolves at that meeting to appoint another

person in his place; or

(c) the auditor has given notice to the company that he does not

wish to be re-appointed.

(5) The board must within five months after the balance sheet date

of the company, prepare an annual report on the affairs of the company

during the accounting period ending on that date which complies with

section 166 of this Act. The board must send a copy of the annual

report to every shareholder not less than twenty working days before

the date fixed for holding the annual meeting of shareholders.

E. LIQUIDATION AND REMOVAL FROM THE REGISTER

34. Resolution to appoint liquidator

The shareholders may resolve to wind up the company voluntarily

by special resolution.

35. Distribution of surplus assets

(1) The surplus assets of the company available for distribution to

shareholders after all creditors of the company have been paid, shall be

distributed in proportion to the number of shares held by each

shareholder, subject to the terms of issue of any shares.

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(2) The liquidator may with the approval of a special resolution,

divide the surplus assets of the company among the shareholders in

kind. For this purpose he may set such value as he considers fair on any

property to be divided, and may determine how the division will be

carried out as between the shareholders or different classes of

shareholders.

F. MISCELLANEOUS

36. Documents to be kept by company

(1) The company must keep at its registered office or at some other

place notice of which has been given to the Registrar in accordance with

subsection (4) of section 116 of the Act, the following documents :—

(a) the certificate of incorporation and the articles of the

company;

(b) minutes of all meetings and resolutions of shareholders within

the last ten years;

(c) an interests register, unless it is a private company which has

dispensed with the need to keep such a register;

(d) minutes of all meetings and resolutions of directors and

directors’ committees within the last ten years;

(e) certificates given by directors under this Act within the last

ten years;

(f) the register of directors and secretaries required to be kept

under section 223 of this Act;

(g) copies of all written communication to all shareholders or all

holders of the same class of shares during the last ten years,

including annual reports prepared under article 33(5);

(h) copies of all financial statements and group financial

statements required to be completed under this Act for the

last ten completed accounting periods of the company;

(i) the copies of instruments creating or evidencing charges and

the register of charges required to be kept under sections

109 and 110 of this Act;

(j) the share register required to be kept under section 123 of

the Act; and

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(k) the accounting records required by section 148 of this Act

for the current accounting period and for the last ten

completed accounting periods of the company.

(2) The references in paragraph (1) of this article to “ten years”

and to “ten completed accounting periods” shall include such lesser

periods as the Registrar may approve, by notice in writing to the company.

37. Rights of directors and shareholders to documents etc.

(1) The directors of the company are entitled to have access to the

company’s records in accordance with section 118 of the Act.

(2) A shareholder of the company is entitled—

(a) to inspect the documents referred to in section 119 of the

Act, in the manner specified in section 121 of the Act; and

(b) to require copies of or extracts from any document which he

may inspect, within five working days of making a request

in writing for the copy or extract, on payment of any

reasonable copying and administration fee determined by

the company. The fee may be determined by any director or

by the secretary, subject to any directions from the board.

38. Name of company

The company may change its name by special resolution in

accordance with section 8 of the Act.

39. Notices

(1) Where the company is required to send any document to a

shareholder or to give notice of any matter to a shareholder, it shall be

sufficient for the company to send the document or notice to the

registered address of the shareholder by ordinary post. Any document

or notice so sent is deemed to have been received by the shareholder

within three working days of the posting of a properly addressed and

prepaid letter containing the document or notice.

(2) A shareholder whose registered address is outside Sri Lanka

may give notice to the company of an address in Sri Lanka to which all

documents and notices are to be sent, and the company shall treat that

address as the registered address of the shareholder for all purposes.

(3) A document may be sent or notice given by the company to the

joint holders of a share, by giving the notice to the holder first named

on the share register in respect of the share.

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(4) Where a shareholder has died or has become bankrupt or

insolvent, the company may continue to send all notices and documents

in respect of his shares addressed to him at his registered address,

notwithstanding that some other person has by reason of the death,

bankruptcy or insolvency, become entitled to those shares, or may send

any notice or document to an address to which that other person requests

the company to send such notices.

(5) A copy of every notice or document sent to all shareholders

must be sent to the auditor of the company.

40. Insurance and indemnity

(1) The company shall indemnify every director, auditor and

secretary of the company for the time being against any costs incurred

in the course of defending any proceeding that relates to any act or

omission in his capacity as director, auditor or secretary, in which

judgment is given in his favour or in which, he is a acquitted or which

is discontinued.

(2) The company may indemnify a director or employee in

circumstances where paragraph (1) does not apply, to the extent

permitted by subsection (3) of section 218 of the Act, if the board

considers it appropriate to do so.

41. Modification in respect of private companies

(1) If the company is registered as a private company, this article

shall apply to that company.

(2) The company must not offer any shares or other securities

issued by it to the public.

(3) The company must at no time have more than fifty shareholders,

not including shareholders who are —

(a) employees of the company; or

(b) former employees who became shareholders of the

company while being employed by it, and who have

continued to be shareholders after ceasing employment with

the company.

(4) The company may by unanimous resolution of its shareholders

dispense with the keeping of an interests register. Any such resolution

shall cease to have effect if any shareholder gives notice in writing to

the company that he requires it to keep an interests register.

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(5) Where all the shareholders of the company agree to or concur

in any action which has been taken or is to be taken by the company —

(a) the taking of that action is deemed to be validly authorized

by the company, notwithstanding anything in these articles;

and

(b) the provisions of this Act referred to in the Second Schedule

to this Act, do not apply in relation to that action, pursuant to

section 31 of the Act.

42. Interpretation

(1) In these articles “the Act” means the Companies Act, No. 07

of 2007, and terms which are defined in the Act, shall have

the same meaning in these articles.

SECOND SCHEDULE [Section 31 (1)]

PROVISIONS WHICH DO NOTAPPLYTO PRIVATECOMPANIESACTINGWITHUNANIMOUS

SHAREHOLDERAPPROVAL

Section 52 (Consideration for issue of shares)

Section 53 (Pre-emptive rights to new issues)

Section 56 (Distributions)

Section 60 (Dividends)

Section 61 (Recovery of distributions)

Section 64 (Purchase of own shares)

Section 70 (Restrictions on giving financial assistance)

Section 90 (Exercise of powers reserved to shareholders)

Section 92(1) (b) (Powers exercised by special resolution)

Section 99 (Alteration of shareholder rights)

Section 185 (Major transactions)

Section 192 (Disclosure of interest)

Section 193 (Avoidance of transactions)

Section 216 (Remuneration and other benefits)

Section 217 (Restrictions on loans to directors)

Section 218 (Indemnity and insurance)

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THIRD SCHEDULE [Section 35 (1)]

PROVISIONSWHICHDONOTAPPLY TO COMPANIESLIMITEDBY GUARANTEE

Part IV (Shares and Debentures)

Sections 93 to 98 (Minority buy-out rights)

Sections 99 to 101 (Interest groups)

Section 123(1)(b) and (c) (Company to maintain share register)

Section 124(1) and (3) (Place of share register)

Sections 198 to 200 (Disclosure of director’s interests in shares)

Section 220 (Duty of directors on serious loss of capital)

Part VIII (Amalgamations)

Sub-paragraphs (b) and (e) to (j) of the Fifth Schedule (Matters to

be included in Annual Return).

FOURTH SCHEDULE [Section 37(1)]

MATTERS TO BE SPECIFIED IN PROSPECTUSAND REPORTS TO BE SETOUTTHEREIN

PART 1

MATTERS TOBE SPECIFIED

1. The business which the subscribers or promoters intend that the

company should carry out during the period of five years from

the date of commencement of business by the company.

2. The number of founders or management or deferred shares if

any, and the nature and extent of the interest of the holders in the

property and profits of the company.

3. The number of shares, if any, fixed by the articles as the

qualification of a director, and any provision in the articles as to

the remuneration of the directors.

4. The names, descriptions and addresses of the directors or proposed

directors.

5. Where shares are offered to the public for subscription, particulars

as to—

(a) the minimum amount which in the opinion of the

directors, must be raised by the issue of those shares in

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order to provide the sums, or if any part thereof is to be

defrayed in any other manner, the balance of the sums,

required to be provided in respect of each of the following

matters :—

(i) the purchase price of any property purchased or

to be purchased which is to be defrayed in whole

or in part out of the proceeds of the issue ;

(ii) any preliminary expenses payable by the company

and any commission so payable to any person in

consideration of his agreeing to subscribe for or

of his procuring or agreeing to procure

subscriptions for any shares in the company ;

(iii) the repayment of any moneys borrowed by the

company in respect of any of the aforesaid matters;

(iv) working capital ; and

(b) the amounts to be provided in respect of the matters aforesaid

otherwise than out of the proceeds of the issue, and the

sources out of which those amounts are to be provided.

6. The time of the opening and closing of the subscription lists.

7. The amount payable on application and allotment on each share,

and in the case of second or subsequent offer of shares, the

amount offered for subscription on each provious allotment

made within the two preceding years, the amount actually

allotted, and the amount, if any, paid on the shares so allotted.

8. The number, description and amount of any shares in, or

debentures of the company which any person has or is entitled

to be given an option to subscribe for, together with the following

particulars of the option, that is to say—

(a) the period during which it is exercisable ;

(b) the price to be paid for shares or debentures subscribed

for under it ;

(c) the consideration (if any) given or to be given for it or

for the right to it ;

(d) the names and addresses of the persons to whom it or the

right to it was given or if given to existing shareholders

or debenture-holders as such, the relevant shares or

debentures.

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9. The number and amount of shares and debentures which within

the two preceding years have been issued or agreed to be issued,

as fully or partly paid up for a consideration other than cash and

the consideration for which those shates or debentures, have

been issued or are proposed or intended to be issued.

10. (1) As respects any property to which this paragraph applies–

(a) the names and addresses of the vendors ;

(b) the amount payable in cash, shares or debentures to the

vendor and where there is more than one separate vendor

or the company is a sub-purchaser, the amount so

payable to each vendor ;

(c) short particulars of any transaction relating to the

property completed within the two preceding years in

which any vendor of the property to the company or

any person who is or was at the time of the transaction,

a promoter or a director or proposed director of the

company had any interest, direct or indirect.

(2) The property to which this paragraph applies is property

purchased or acquired by the company or proposed so to

be purchased or acquired, which is to be paid for wholly or

partly out of the proceeds of the issue offered for

subscription by the prospectus or the purchase or acquisition

of which has not been completed at the date of the issue of

the prospectus, other than property—

(a) the contract for the purchase or acquisition whereof

was entered into in the ordinary course of the

company’s business, the contract not being made in

contemplation of the issue nor the issue in consequence

of the contract ; or

(b) as respects which the amount of the purchase money is

not material.

11. The amount if any, paid or payable as purchase money in cash,

shares or debentures for any property to which the last foregoing

paragraph applies, specifying the amount if any, payable for

goodwill.

12. The amount, if any paid within the two preceding years or

payable as commission (but not including commission to sub-

underwriters) for subscribing or agreeing to subscribe or

procuring or agreeing to procure subscriptions, for any shares

in or debentures of the company, or the rate of any such

commission.

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13. The amount or estimated amount of preliminary expenses and

the persons by whom any of those expenses have been paid or

are payable and the amount or estimated amount of the expenses

of the issue and the persons by whom any of those expenses

have been paid or are payable.

14. Any amount or benefit paid or given within the two preceding

years or intended to be paid or given to any promoter and the

consideration for the payment or the giving of the benefit.

15. The dates or parties to and general nature of every material

contract, not being a contract entered into in the ordinary course

of the business carried on or intended to be carried on by the

company or a contract entered into more than two years before

the date of issue of the prospectus.

16. The names and addresses of the auditors, if any, of the company.

17. Full particulars of the nature and extent of the interest, if any, of

every director in the promotion of or in the property proposed

to be acquired by the company, or where the interest of such a

director consists in being a partner in a firm, the nature and

extent of the interest of the firm, with a statement of all sums

paid or agreed to be paid to him or to the firm, in cash or shares

or otherwise by any person, either to induce him to become or

to qualify him as a director or otherwise for service rendered by

him or by the firm in connection with the promotion or formation

of the company.

18. Where the prospectus invites the public to subscribe for shares

in the company and the share capital of the company is divided

into different classes of shares, the right of voting at meetings of

the company conferred by and the other rights and obligations

attached to the several classes of shares, respectively.

19. In the case of a company which has been carrying on business or

a business which has been carried on for less than three years, the

length of time during which the business of the company or the

business to be acquired, as the case may be, has been carried on.

PART II

REPORT TO BE SET OUT

20. (1) A report by the auditors of the company with respect to—

(a) profits and losses and assets and liabilities in accordance

with the provisions of sub-paragraph (2) or sub-

paragraph (3) of this paragraph, as the case requires ;

and

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(b) the rates of the dividends, if any, paid by the company

in respect of each class of shares in the company in

respect of each of the five financial years immediately

preceding the issue of the prospectus, giving particulars

of each such class of shares on which such dividends

have been paid, and particulars of the cases in which no

dividends have been paid in respect of any class of

shares, in respect of any of those years,

and, if no accounts have been made up in respect of any part of

the period of five years ending on the date three months before

the issue of the prospectus, containing a statement of that fact.

(2) Where the company has no subsidiaries, the report shall—

(a) so far as regards profits and losses, deal with the profits

or losses of the company in respect of each of the five

financial years immediately preceding the issue of the

prospectus ; and

(b) so far as regards assets and liabilities, deal with the

assets and liabilities of the company as at the last date to

which the accounts of the company were made up.

(3) Where the company has subsidiaries, the report shall—

(a) so far as regards profits and losses, deal separately with

the company’s profit or losses as provided by the

provisions of sub-paragraph (2) of this paragraph and

in addition, deal either—

(i) as a whole with the combined profits and losses of

its subsidiaries, so far as they concern members of

the company ; or

(ii) individually with the profits or losses of each

subsidiary, so far as they concern members of the

company,

or, instead of dealing separately with the company’s profits or

losses, deal as a whole with the profits or losses of the company

and so far as they concern members of the company with the

combined profits or losses of its subsidiaries ; and

(b) so far as regards assets and liabilities, deal separately

with the company’s assets and liabilities as provided by

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the provisions of sub-paragraph (a) above, and in

addition deal either—

(i) as a whole with the combined assest and liabilities

of its subsidiaries with or without the company’s

assets and liabilities ; or

(ii) individually with the assets and liabilites of each

subsidiary,

and shall indicate as respects the assets and liabilities of the

subsidiaries, the allowances to be made for persons other than

members of the company.

21. Where the proceeds or any part of the proceeds of the issue of

the shares or debentures are or is to be applied directly or indirectly

in the purchase of any business, a report made by accountants

(who shall be named in the prospectus) upon—

(a) the profits or losses of the business in respect of each of

the five financial years immediately preceding the issue

of the prospectus ; and

(b) the assets and liabilities of the business at the last date to

which the accounts of the business were made up.

22. (1) Where—

(a) the proceeds or any part of the proceeds of the issue of

the shares or debentrures are or is to be applied directly

or indirectly in any manner resulting in the acquisition

by the company of shares in any other body corporate;

and

(b) by reason of that acquisition or anything to be done in

consequence thereof or in connection therewith, that

body corporate will become a subsidiary of the

company,

a report made by accountants (who shall be named in the

prospectus) upon—

(i) the profits and losses of the other body corporate

in respect of each of the five financial years

immediately preceding the date of issue of the

prospectus ; and

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(ii) the assets and liabilities of the other body corporate

at the last date to which the accounts of the body

corporate were made up.

(2) The report referred to in sub-paragraph (i) shall—

(a) indicate how the profits or losses of the other body

corporate dealt with in the report would in respect of

the shares to be acquired, have concerned members of

the company and what allowance would have fallen to

be made in relation to assets and liabilities so dealt with

for holders of other shares, if the company had at all

material times held the shares to be acquired ; and

(b) where the other body corporate has subsidaries deal

with the profits or losses and the assets and liabilities of

the body corporate and its subsidiaries in the manner

provided by sub-paragraph (3) of paragraph 20 in

relation to the company and its subsidiaries.

PART III

PROVISIONSAPPLICABLE TO PARAGRAPHS1 TO 22

23. The provisions of paragraphs 3, 4, 13 (so far as it relates to

preliminary expenses) and 17 shall not apply in the case of a

prospectus issued more than two years after the date on which

the company is entitled to commence business.

24. Every person shall for the purpose of this Schedule, be deemed

to be a vendor who has entered into any contract absolute or

conditional for the sale or purchase or for any option of purchase,

of any property to be acquired by the company in any case

where—

(a) the purchase money is not fully paid at the date of the

issue of the prospectus ;

(b) the purchase money is to be paid or satisfied wholly or in

part out of the proceeds of the issue offered for

subscription by the prospectus ;

(c) the contract depends for its validity or fulfillment on the

result of that issue.

25. Where any property to be acquired by the company is to be

taken on lease, this Schedule shall have effect as if the expression

“vendor” included the lessor, the expression “purchase money”

included the consideration for the lease, and the expression

“sub-purchaser” included a sub-lessee.

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26. Any references in paragraph 8 to subscribing for shares or

debentures shall include acquiring them from a person to whom

they have been allotted or agreed to be allotted with a view to his

offering them for sale.

27. For the purposes of paragraph 10 where the vendors or any of

them are a firm, the members of the firm shall not be treated as

separate vendors.

28. Where in the case of a company which has been carrying on

business or of a business which has been carried on for less than

five years, the accounts of the company or business have only

been made up in respect of four years, three years, two years or

one year, provisions of paragraphs 20, 21 and 22 shall have

effect as if reference to four years, three years, two years or one

year, as the case may be, were substituted for references to five

years.

29. The expression “financial year” in paragraphs 20, 21 and 22

means the year in respect of which the accounts of the company

or of the business, as the case may be, are made up, and where

by reason of any alteration of the date on which the financial

year of the company or business terminates, the accounts of the

company or business have been made up for a period greater or

less than a year, that greater or lesser period shall for the purpose

of those paragraphs be deemed to be a financial year.

30. Any report required by paragraphs 20, 21 and 22 shall either

indicate by way of a note, any adjustments as respect the figures

of any profits or losses or assets and liabilities dealt with by the

report which appear to the person making the report necessary,

or shall make those adjustments and indicate that adjustments

have been made.

31. Any report by accountants required by paragraphs 20, 21 and

22 shall be made by accountants qualified under this Act for

appointment as auditors of a company, and shall not be made by

any accountant who is an officer or servant or a partner of or in

the employment of an officer or servant of the company or of

the company’s subsidiary or holding company or of a subsidiary

of the company’s holding company, and for the purpose of this

paragraph the expression “officer” shall include a proposed

director, but not an auditor.

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FIFTH SCHEDULE [Section 131]

MATTERS TO BEINCLUDEDINANNUALRETURN

The following matters shall be included in the annual return of a

company, other than any matters which are specified in regulations

made under this Act, as matters which all companies or any class of

companies may omit from their annual return :—

(a) a list of all persons who, on the fourteenth day from the date

of the first or only ordinary general meering in the year, are

shareholders of the company, and all persons who have

ceased to be shareholders since the date of the last return or

in the case of the first return, of the incorporation of the

company ;

(b) the names and addresses of all the past and present

shareholders mentioned in the return, and the number of

shares held by each of the existing shareholders at the date of

the retuen, specifying shares transferred since the date of the

last return or in the case of the first return, of the incorporation

of the company by persons who are still shareholders and

have ceased to be shareholders respectively, and the dates of

registration of the transfers. If the names are not arranged in

alphabetical order, the return shall have annexed to it an

index sufficient to enable the name of any person in such list

to be readily found ;

(c) the date of incorporation and any change of name of the

company ;

(d) the address of the registered office of the company ;

(e) the total number of shares issued by the company ;

(f) the stated capital of the company ;

(g) the total number of shares forfeited ;

(h) the total amount of shares for which share warrants are

outstanding at the date of the return ;

(i) the total amount of share warrants issued and surrendered

respectively since the date of the last return ;

(j) the number of shares comprised in each share warrant ;

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(k) all such particulars with respect to the persons who at the

date of the return are the directors or the secretary of the

company, as are required to be contained in the register of

directors and secretaries of a company ;

(l) the total amount of the indebtedness of the company in

respect of all mortgages and charges which are required to

be registered with the Registrar under this Act ;

(m) the name and address of the auditor of the company, at the

date of the return.

SIXTH SCHEDULE [Section 186]

PROVISIONS WHICH CONFER POWERS ON BOARDWHICHMAY NOT BEDELEGATED

Section 51 (Issue of shares)

Section 52 (Consideration for issue of shares)

Section 56 (Distributions)

Section 58 (2) and (3) (Stated capital)

Section 59 (4) (Reduction of stated capital)

Section 64 (Purchase of own shares)

Section 67 (Redemption option of company)

Section 70 (Restrictions on giving financial assistance)

Section 114 (Change of registered office)

Section 241 (Approval of amalgamation proposal)

Section 242 (Short form amalgamation)

Section 401 (Power of board to appoint administrator)

Section 415 (Vacancy in office of administrator)

SEVENTH SCHEDULE [Section 249(2)]

PROCEEDINGS AT MEETINGS OFCREDITORS

1. Methods of holding meetings

A meeting of creditors may be held—

(a) by assembling together those creditors entitled to take part

and who choose to attend at the place, date, and time appointed

for the meeting;

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(b) by means of audio or audio and visual communication, by

which all creditors participating can simultaneously hear

each other throughout the meeting; or

(c) by conducting a postal ballot in accordance with paragraph

7 of this Schedule, of those creditors entitled to take part.

2. Notice of meeting

(1) Written notice of—

(a) the time and place of every meeting to be held under

paragraph 1 (a) of this Schedule;

(b) the time and method of communication for every meeting to

be held under paragraph 1(b) of this Schedule; or

(c) the time and address for the return of voting papers for

every meeting to be held under paragraph 1 (a) or (b) or (c)

of this Schedule,

shall be sent to every creditor entitled to attend the meeting and to any

liquidator not less than five working days before the meeting.

(2) The notice shall —

(a) state nature of the business to be transacted at the meeting in

sufficient detail to enable a creditor to form a reasoned

judgment in relation to it;

(b) set out the text of any resolution to be submitted to the

meeting; and

(c) include a voting paper in respect of each such resolution

and voting and mailing instructions.

(3) An irregularity in or a failure to receive a notice of any meeting

of creditors does not invalidate anything done by a meeting of creditors,

if—

(a) the irregularity or failure is not material;

(b) all the creditors entitled to attend and vote at the meeting

attend the meeting without protest as to the irregularity or

failure; or

(c) all such creditors agree to waive the irregularity or failure.

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(4) If the meeting of creditors agrees, the chairperson may adjourn

the meeting from time to time and from place to place.

(5) An adjourned meeting shall be held in the same place unless

another place is specified in the resolution for the adjournment.

(6) Where a meeting of creditors under paragraph 1 (a) or (b) of

this Schedule is adjourned for less than thirty days, it will not be

necessary to give notice of the time and place of the adjourned meeting,

other than by announcement at the meeting which is adjourned.

3. Chairperson

(1) Where a liquidator has been appointed and is present or if the

liquidator has appointed a nominee and the nominee is present, he or

she shall act as chairperson of a meeting held in accordance with

paragraph 1 (a) or (b) of this Schedule.

(2) In any case where there is no liquidator or neither the liquidator

nor any nominee of the liquidator is present, the creditors participating

shall choose one of their number to act as chairperson of the meeting.

(3) The person convening a meeting under paragraph 1 (c) of this

Schedule shall do everything necessary that would otherwise be done

by the person chairing a meeting.

4. Quorum

(1) A quorum for a meeting of creditors is present, if—

(a) three creditors who are entitled to vote or their proxies are

present or have cast postal votes; or

(b) if the number of creditors entitled to vote does not exceed

three, the creditors who are entitled to vote or their proxies

are present or have cast postal votes.

(2) Where a quorum is not present within thirty minutes after the

time appointed for the meeting, the meeting shall be adjourned to the

same day in the following week at the same time and place or to such

other date, time, and place as the chairperson may appoint, and if at the

adjourned meeting a quorum is not present within thirty minutes after

the time appointed for the meeting, the creditors present or their proxies

shall be deemed to form a quorum.

5. Voting

(1) At any meeting of creditors or a class of creditors, other than a

meeting held for the purposes of section 250 or section 407, a resolution

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is adopted, if a majority in number and value of the creditors or the

class of creditors, voting in person or by proxy, vote in favour of the

resolution.

(2) At any meeting of creditors or a class of creditors held for the

purposes of section 250 or section 407, a resolution is adopted, if a

majority in number representing seventy-five per centum in value of

the creditors or class of creditors voting in person or by proxy, vote in

favour of the resolution.

(3) The chairperson of the meeting shall not have a casting vote.

6. Proxies

(1) A creditor may exercise the right to vote either by being present

in person or by proxy.

(2) A proxy for a creditor is entitled to attend and be heard at a

meeting of creditors, as if the proxy were the creditor.

(3) A proxy shall be appointed by notice in writing signed by the

creditor and the notice shall state whether the appointment is for a

particular meeting or a specified term not exceeding twelve months.

(4) No proxy is effective in relation to a meeting, unless a copy of

the notice of appointment is delivered to the liquidator or if no liquidator

is acting, to the person by whom the notice convening the meeting was

given, not later than twenty-four hours before the start of the meeting.

7. Postal votes

(1) A creditor entitled to vote at a meeting of creditors held in

accordance with paragraph 1 (a) or (b) or (c) of this Schedule, may

exercise the right to vote by casting a postal vote in relation to a matter

to be decided at that meeting.

(2) The notice of meeting shall state the name of the person

authorised to receive and count postal votes in relation to that meeting.

(3) If no person has been authorised to receive and count postal

votes in relation to a meeting, or if no person is named as being so

authorised in the notice of the meeting—

(a) every director;

(b) if the company is under administration, the administrator; or

(c) if the company is in liquidation, the liquidator,

is deemed to be so authorised

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(4) A creditor may cast a postal vote on all or any of the matters to

be voted on at the meeting, by sending a marked voting paper to a

person authoirsed to receive and count postal votes in relation to that

meeting, so as to reach that person not later than twenty-four hours

before the start of the meeting or if the meeting is held under paragraph

1 (c) of this Schedule, not later than the date named for the return of the

voting paper.

(5) It is the duty of a person authorised to receive and count postal

votes in relation to a meeting—

(a) to collect together all postal votes received by him or her;

and

(b) in relation to each resolution to be voted on—

(i) to count the number of creditors or creditors belonging

to a class of creditors, as the case may be, voting in

favour of the resolution and determine the total amount

of the debts owed by the company to those creditors;

and

(ii) to count the number of creditors or creditors belonging

to a class of creditors, as the case may be, voting against

the resolution and determine the total amount of the

debts owed by the company to those creditors; and

(c) to sign a certificate—

(i) that he or she has carried out the duties set out in sub-

paragraphs (a) and (b); and

(ii) stating the results of the counts and determinations

required by sub-paragraph (b); and

(d) to ensure that the certificate required by sub-paragraph (c)

above, is presented to the person chairing or convening the

meeting.

(6) If a vote is taken at a meeting held under paragraph 1(a) or (b)

of this Schedule on a resolution on which postal votes have been cast,

the person chairing the meeting shall include the results of voting by all

creditors who have sent in a voting paper, duly marked as for or against

the resolution.

(7) A certificate given under sub-paragraph (5) in relation to the

postal votes cast in respect of a meeting of creditors, shall be annexed

to the minutes of the meeting.

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8. Minutes

(1) The person chairing a meeting of creditors or in the case of a

meeting held under paragraph 1(c) of this Schedule, the person

convening the meeting shall ensure that minutes are kept of all

proceedings.

(2) Minutes which have been signed correct by the person chairing

or convening the meeting are prima facie evidence of the proceedings.

9. Corporations may act by representatives

A body corporate which is a creditor, may appoint a representative

to attend a meeting of creditors on its behalf.

10. Other proceedings

Except as provided in this Schedule and in any regulations made

under this Act, a meeting of creditors may regulate its own procedure.

EIGHTH SCHEDULE [Section 355 (2)]

PROVISIONS WHICH DO NOTAPPLY INTHE CASE OFA WINDING UP SUBJECT TO

SUPERVISIONOFTHE COURT

Section 283 (Statement of company’s affairs to be submitted to official

receiver)

Section 284 (Report by official receiver)

Section 285 (Power of court to appoint liquidators)

(Section 286(Appointment and powers of provisional liquidator)

Section 287 (Appointment, style, &c., of liquidators in winding up)

Section 288 (Provisions where person other than official receiver is

appointed liquidator)

Section 289 (General provisions as to liquidators)

Section 293 (Exercise and control of liquidators’ powers)

Section 294 (Books to be kept by liquidator)

Section 295 (Payments by liquidator into bank)

Section 296 (Audit of liquidators’ accounts)

Section 297 Control of Registrar over liquidators)

Section 298 (Release of liquidators)

Section 299 (Meeting of creditors and contributories to determine

whether committee of inspection shall be appointed)

Section 300 (Constitution and proceedings of Committee of Inspection)

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Section 301(Powers of court where there is no Committee of

Inspection)

Section 307 (Appointment of special manager)

Section 311 (Power to order public examination of promoters,

directors, &c.)

Section 213 (Persons prohibited from managing companies)

Section 315 (Delegation to liquidator of certain powers of court)

NINTH SCHEDULE [Section 365 (2)]

PREFERENTIALCLAIMS

1. The liquidator shall first pay, in the order of priority in which

they are listed:—

(a) the fees and expenses properly incurred by the liquidator

in carrying out the duties and exercising the powers of the

liquidator and the remuneration of the liquidator;

(b) the reasonable costs of a person who applied to the court

for an order that the company be put into liquidation,

including the reasonable costs of a person appearing on

the application whose costs are allowed by the court;

(c) the actual out-of-pocket expenses necessarily incurred by

a liquidation committee.

2. After paying the claims referred to in paragraph 1, the liquidator

shall next pay the following claims :—

(a) all provident fund dues, employees trust fund dues and

gratuity payments due to any employee;

(b) income tax charged or chargeable for one complete year

prior to the commencement of the liquidation, that year to

be selected by the Commissioner-General of Inland

Revenue in accordance with the provisions of the Inland

Revenue Act, No. 10 of 2006;

(c) turnover tax charged or chargeable for one complete year

prior to the commencement of the liquidation;

(d) value added tax charged or chargeable for four taxable

periods prior to the commencement of the liquidation,

such taxable periods to be selected by the Commissioner-

General of Inland Revenue in accordance with the provisions

of the Value Added Tax Act, No. 14 of 2002;

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(e) all rates or taxes (other than income tax) due from the

company at the commencement of the liquidation which

became due and payable within the period of twelve months

prior to that date;

(f) all dues to the Government as recurring payments for any

services given or rendered periodically;

(g) industrial court awards and other statutory dues payable to

any employee;

(h) subject to paragraph 4, all wages or salary of any employee

whether or not earned wholly or in part by way of

commission, and whether payable for time or for piece

work, in respect of services rendered to the company during

the four months preceding the commencement of the

liquidation;

(i) holiday pay becoming payable to an employee (or where

the employee has died, to any other person in the

employee’s right), on the termination of the employment

before or by reason of the commencement of the

liquidation;

(j) unless the company has at the commencement of the

liquidation, rights capable of being transferred to and vested

in an employee under a contract of the kind referred to in

section 24 of the Workmen’s Compensation Ordinance, all

amounts due in respect of any compensation or liability

for compensation under that Ordinance, which have

accrued before the commencement of the liquidation;

(k) subject to paragraph 4, amounts deducted by the company

from the wages or salary of an employee in order to satisfy

obligations of the employee.

3. After paying the claims referred to in paragraph 2, the liquidator

must next pay the amount of any costs referred to in paragraph

(d) of section 254 of this Act.

4. The sum to which priority is to be given under paragraph 2 (h)

shall not, in the case of any one employee, exceed twelve thousand

rupees or such greater amount as is determined at the

commencement of the liquidation.

5. Where any compensation under the Workmen’s Compensation

Ordinance is a fortnightly payment, the amount due in respect

of that compensation shall, for the purposes of paragraph 2(i),

be the amount of the lump sum for which those payments may

be commuted under that Ordinance.

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6. Where a payment has been made—

(a) to an employee of a company on account of wages or

salary; or

(b) to any such employee or where the employee has died, to

any other person on behalf of the employee on account of

holiday pay,

out of money advanced by some person for that purpose, the

person by whom the money was advanced has in a liquidation,

the same right of priority in respect of the money so advanced as

the employee or other person receiving the payment on behalf of

the employee would have, if the payment had not been made.

7. The claims listed in each of paragraphs 1, 2, and 3—

(a) rank equally among themselves and shall be paid in full,

unless the assets are insufficient to meet them, in which

case they abate in equal proportions; and

(b) so far as the assets of the company available for payment

of general creditors are insufficient to meet them, shall

have priority over the claims of persons in respect of assets

which are subject to a floating charge, and shall be paid

accordingly out of those assets.

For the purposes of this paragraph, the term “floating charge”

includes a security that conferred a floating charge at the time of

its creation, but has since become a fixed or specific charge.

8. For the purposes of this Schedule—

(a) remuneration in respect of a period of holiday or of absence

from work through sickness or other good cause, shall be

treated as wages in respect of services rendered to the

company during that period;

(b) the expression “holiday pay” in relation to a person,

includes all sums which by virtue of his contract of

employment or any enactment (including any Order made

or direction given under any written law) are payable to

that person by the company on account of the remuneration

which would in the ordinary course, have become payable

to him in respect of a period of holiday, had his period of

employment continued until he became entitled to be

allowed the holiday;

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(c) the expression “rates” or “taxes” means any rate charge,

tax or assessment imposed or made by the Government or

by any Provincial Council or local authority or any other

authority established by or under any written law.

TENTH SCHEDULE [Section 366 (5)]

PAYMENT OFCLAIMSINLIQUIDATION

1. The liquidator may from time to time distribute such amount of

the funds held by him as he thinks fit to creditors who have

made a claim in the liquidation.

2. Before making any payment to creditors the liquidator shall

prepare a list showing all claims received, the amount of the

claim and the amount to be paid to each person who has made a

claim.

3. Before making a payment, the liquidator may—

(a) fix a date before which any creditor who wishes to

participate in the payment shall file a claim; and

(b) give public notice that a payment is to be made and of the

date fixed under sub-paragraph (a).

4. A date fixed for the purpose of sub-paragraph (a) of paragraph

3, shall not be less than twenty working days after the date of the

public notice given under sub-paragraph (b) of paragraph 3 or

more than twenty working days before the date of the proposed

payment.

5. The liquidator may exclude from a payment, any creditor who

does not make a claim before the date specified in a notice given

under paragraph 3.

6. The list prepared by the liquidator under paragraph 2 shall be

available for inspection by any creditor who has made a claim

or any shareholder of the company, on each working day which

is less than ten working days before the date of the payment.

7. The liquidator shall make the payment on the date specified in

the public notice given under paragraph 3 to each creditor

shown on the list, unless notice of an application under subsection

(3) of section 292 or section 348, for an order reversing or

modifying the decision of the liquidator to accept the claim of

that creditor, has been served on the liquidator before that date.

No payment made in accordance with this paragraph shall be

liable to be disturbed as a consequence of any subsequent

challenge to the liquidator’s acceptance of a claim.

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8. Where a creditor makes a claim after one or more payments

have been made to creditors by the liquidator—

(a) that creditor shall be paid at the same rate in respect of his

claim as all other creditors with equal ranking claims have

previously been paid, to the extent that the assets of the

company are sufficient to do so;

(b) any payments which have already been made to other

creditors shall not be disturbed;

(c) that creditor shall be entitled to participate in the same

manner as other creditors with equal ranking claims in any

further payments to such creditors.

9. Where at the time a payment is made to creditors, a claim by any

creditor—

(a) has been rejected by the liquidator, and the creditor has

applied to the court under subsection (3) of section 292 or

section 348 for an order reversing or modifying the decision

of the liquidator; or

(b) has been allowed by the liquidator, but notice of an

application under subsection (3) of section 292 or section

348 for an order reversing or modifying the decision of

the liquidator has been served on the liquidator,

the liquidator—

(c) shall not make a payment to that creditor in respect of that

claim;

(d) may if he thinks fit, make provision for the payment that

would be made in respect of that claim and for the probable

cost of the application if the claim is admitted, before

making any payment to the other creditors.

10. A guarantor of any debt or obligation of the company who has

paid or discharged the debt or obligation in whole or in part,

whether before or after the commencement of the liquidation,

may, subject to any agreement with the principal creditor to the

contrary—

(a) if the principal creditor has made a claim in the liquidation

in respect of the amount which has been paid or discharged,

stand in the place of the principal creditor so far as the

claim in respect of that amount is concerned; or

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(b) otherwise, make a claim in respect of the amount of the

debt or obligation paid or discharged.

ELEVENTH SCHEDULE [Section 429 (1)]

TERMSIMPLIEDININSTRUMENTSCREATINGFLOATINGCHARGES

1. The company shall not sell or otherwise dispose of the property

comprised in the floating charge (referred to in this Schedule as

the “secured property”) other than in the normal course of

business.

2. The floating charge shall be security for the payment of all sums

owing by the company to the grantee, from time to time.

3. The floating charge and the instrument creating it shall remain

in full force and effect and shall be a continuing security for the

payment of any sums owing by the company to the grantee

from time to time, notwithstanding that any sum or sums may be

paid to the grantee and that any account between the company

and the grantee may from time to time be in credit, and

notwithstanding any settlement of account or other matter or

thing whatsoever, until a final discharge of the floating charge is

executed by the grantee in respect of the property comprised in

it.

4. The company undertakes to—

(a) duly and punctually comply with all laws binding on it;

(b) duly and punctually perform and comply with the terms of

all agreements between the company and the grantee;

(c) pay or discharge on or before the due date, all its liabilities,

debts, outgoings, expenses and obligations of a monetary

nature, including rents, taxes, insurance premiums and

other outgoings in respect of the secured property;

(d) comply with all obligations, duties and restrictions binding

on the company whether arising from contract or otherwise

including all leases, sub-leases, agreements to lease, tenancy

agreements or licences in respect of the secured property;

(e) keep all its assets in good order, repair and condition and

maintain, service, renew or replace, assets essential to its

business in accordance with good commercial practice;

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(f) obtain, keep current and not dispose of or allow to lapse

any authorisations which are now or may become required

or commercially advantageous for the conduct of its

business, and comply with all conditions and stipulations

in those authorisations;

(g) insure and keep insured such parts of the secured property

as shall for the time being be of an insurable nature against

loss or damage by fire, accident, theft, malicious damage,

flood and earthquake;

(h) duly pay the premiums payable in respect of all such

insurances.

5. Where the company neglects or fails to perform or observe any

of the terms expressed or implied in the instrument or of any

agreement between the company and the grantee, the grantee

shall have the right to perform or observe any such term, whether

by payment or action on behalf of the company, but shall not be

obliged to do so. All costs, expenses and charges paid or incurred

by the grantee under this paragraph, shall be added to and shall

form part of the moneys secured by the floating charge.

6. The company shall—

(a) deliver to the grantee as soon as practicable and in any

event within three months after the last day of each of its

financial years, all financial statements which it is required

by law to prepare, together with all auditors’ reports, annual

reports and other documents required by law to be prepared

by the company and sent to shareholders;

(b) provide such other information about the business, financial

condition and operations of the company as the grantee

may by written notice reasonably require;

(c) at the same time as any notices, documents, or information

are sent to its shareholders, deliver copies of the notices,

documents or information to the grantee.

7. Notwithstanding any other agreement between the company

and the grantee, all sums secured by this floating charge shall

become immediately due and payable by the grantee on demand

by the grantor, on the occurrence of any of the following

events:—

(a) the company failing to pay on the due date any amount

payable by the company to the grantee;

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(b) the company failing to perform or observe any of the

terms of the instrument or of any other agreement between

the company and the grantee;

(c) any holder of a security interest in any property of the

company, taking possession or a receiver or liquidator

being appointed in respect of the whole or any part of the

secured property;

(d) any creditor of the company obtaining execution against

the whole or any part of the secured property;

(e) the commencement of the winding up of the company;

(f) the appointment of an administrator of the company;

(g) the disposal by the company of the whole or any part of its

undertaking, other than in the normal course of business ;

(h) the company ceasing to carry on business.

8. Where the secured property comprises all the property and

undertaking of the company, the grantee may appoint a receiver

of the secured property on the occurrence of any of the events

specified in paragraph 7, whether before or after demand is

made under that paragraph.

TWELFTH SCHEDULE [Section 443 (2)]

POWERSOF RECEIVERS

1. Every receiver appointed under Part XV shall, subject to the

instrument or the order of the court by or under which the

appointment was made, have the power to—

(a) demand and recover by action or otherwise, income of the

property in receivership;

(b) issue receipts for income recovered;

(c) manage the property in receivership;

(d) insure the property in receivership;

(e) repair and maintain the property in receivership;

(f) inspect at any reasonable time books or documents that

relate to the property in receivership and that are in the

possession or under the control of the grantor;

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(g) exercise on behalf of the grantor, a right to inspect books

or documents that relate to the property in receivership

and that are in the possession or under the control of a

person other than the grantor;

(h) in a case where the receiver is appointed in respect of all or

substantially all of the property and undertaking of a

company, change the registered office of the company;

(i) do all other things incidental to the exercise of the powers

set out in this paragraph or conferred by any other provision

of this Act.

2. Without limiting the provisions of paragraph 1, a receiver who

is appointed in respect of the whole of the property and

undertaking of a company shall, subject to the instrument or the

order of the court by or under which the appointment was

made, have power to—

(a) take possession of, collect and get in the property of the

company, and for that purpose to take such proceedings as

may seem to him expedient;

(b) sell or otherwise dispose of the property of the company

by public auction, private auction or private contract;

(c) raise or borrow money and grant security for such money

over the property of the company;

(d) appoint a solicitor or accountant or other professionally

qualified person to assist him in the performance of his

functions;

(e) bring or defend any action or legal proceedings in the

name and on behalf of the company;

(f) refer to arbitration any question affecting the company;

(g) use the company’s seal if it has one;

(h) do all acts and to execute in the name and on behalf of the

company any document;

(i) draw, accept, make and endorse any bill of exchange or

promissory note in the name and on behalf of the company;

(j) appoint any agent to do any business which he is unable to

do himself or which can more conveniently be done by an

agent, and to employ and dismiss employees;

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(k) do all such things (including the carrying out of works) as

may be necessary for the realisation of the property of the

company;

(l) make any payment which is necessary or incidental to the

exercise of his functions;

(m) effect and maintain insurances in respect of the business

and property of the company;

(n) carry on the business of the company;

(o) establish subsidiaries of the company;

(p) transfer to subsidiaries of the company the whole or any

part of the business and property of the company;

(q) grant or accept a surrender of a lease or tenancy of any

property of the company and to take a lease or tenancy of

any property required or convenient for the business of

the company;

(r) make any arrangement or compromise on behalf of the

company;

(s) rank and claim in the bankruptcy, insolvency, sequestration

or liquidation of any person indebted to the company and

to receive dividends and to accede to trust deeds for the

creditors of any such person;

(t) apply for the appointment of a liquidator of the company;

(u) do all other things incidental to the exercise of the powers

set out in this paragraph.

THIRTEENTH SCHEDULE [Section 497 (1)]

LIQUIDATION OFASSETSOFOVERSEASCOMPANIES

1. Part XII shall apply to the winding up of the assets in Sri Lanka

of an overseas company with all necessary modifications and

exclusions, and in particular the following :—

(a) references to assets shall be taken as references to assets in

Sri Lanka;

(b) references to a company shall be taken as including

references to an overseas company;

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(c) references to dissolution shall be taken as references to

ceasing to carry on business in Sri Lanka;

(d) the following provisions shall not apply to such a winding

up:—

(i) paragraphs (b) and (c) of subsection (1) of section

267;

(ii) sections 268, 269, 316, 319 to 355 (both inclusive),

393, 394 and 395;

(e) from the commencement of the winding up, the overseas

company and its directors shall cease to have any powers,

functions and duties in relation to the company’s assets in

Sri Lanka, other than those required or permitted to be

exercised under Part XII.

2. Nothing contained in this Act shall exclude or affect the right of

a creditor of an overseas company in relation to the assets of

which a liquidator has been appointed—

(a) to bring proceedings outside Sri Lanka against the overseas

company, in relation to a debt not claimed in the liquidation

or the balance of a debt remaining unpaid after the

completion of the liquidation; or

(b) to bring proceedings in Sri Lanka in relation to the balance

of a debt remaining unpaid after the completion of the

liquidation.

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