COMPANIES.

No. 7 of 1962.

An Ordinance relating to Companies.

1. This Ordinance may be cited as the *Companies Ordinance* 1962.* Short title.

2. This Ordinance shall come into operation on the first day of July, One thousand nine hundred and sixty-two. Commencement.

3. This Ordinance is divided into Parts, as follows:— Parts.

Part I.—Preliminary (Sections 1-6).

Part II.—Administration (Sections 7-13).

Part III.—Constitution of Companies.

Division 1.—Incorporation (Sections 14-18).

Division 2.—Powers (Sections 19-36).

Part IV.—Shares, Debentures and Charges.

Division 1.—Prospectuses (Sections 37-47).

Division 2.—Restrictions on Allotment and Commencement of Business (Sections 48-53).

Division 3.—Shares (Sections 54-69).

Division 4.—Debentures (Sections 70-75).

Division 5.—Interests other than Shares, Debentures, &c. (Sections 76-89).

Division 6.—Title and Transfers (Sections 90-99).

Division 7.—Registration of Charges (Sections 100-110).

* Made on 20th June, 1962; notified in the *Commonwealth Gazette* on 21st June, 1962, and commenced on 1st July, 1962.

Repeal and amendment of Ordinances; transitional provisions.
N.S.W. No. 33 of 1936, ss. 3–4.
Vic. No. 6455 of 1958, s. 2.
Qld. 22 Geo. V., No. 53, s. 4.
S.A. No. 2196 of 1934, s. 2.
W.A. 7 Geo. VI., No. XXXI, s. 4.
Tas. No. 29 of 1959, s. 2.

4.—(1.) The Ordinances specified in Part I. of the First Schedule are repealed.

(2.) The Ordinances specified in the first column of Part II. of the First Schedule are amended as respectively set out in the second column of that Part of that Schedule.

(3.) An Ordinance specified in the first column of Part III. of the First Schedule, as amended by this Ordinance, may be cited in the manner specified in the second column of that Part of that Schedule opposite to the reference to that Ordinance in the first column.

(4.) Unless the contrary intention appears in this Ordinance—

(*a*) all persons, things and circumstances appointed or created by or under the repealed Ordinance, or existing or continuing under the repealed Ordinance immediately before the commencement of this Ordinance, shall, under and subject to this Ordinance, continue to have the same status, operation and effect as they respectively would have had if the Ordinances specified in Part I. of the First Schedule had not been repealed; and

(*b*) in particular and without affecting the generality of the last preceding paragraph, the repeal effected by sub-section (1.) of this section does not disturb the continuity of status, operation or effect of any order, rule, regulation (not being a regulation made under section twenty-four of the *Companies Ordinance* 1954 or the *Companies Ordinance* 1954-1961), appointment, conveyance, mortgage, charge, deed, agreement, resolution, direction, instrument, document, memorandum, articles, incorporation, nomination, affidavit, call, forfeiture, minute, assignment, register, registration, transfer, list, licence, certificate, security, notice, compromise, arrangement, right, priority, liability, duty, obligation, proceeding, matter or thing made, done, effected, given, issued, passed, taken, validated, entered into, executed, lodged, accrued, incurred, existing, pending or acquired by or under the repealed Ordinance, or under any corresponding previous law of the Territory, before the commencement of this Ordinance.

(5.) Nothing in this Ordinance affects—

(*a*) Table A, or any part of Table A, in Schedule Two to the Companies Act (either as originally enacted or as altered in pursuance of any statutory power) or the corresponding Table in any corresponding previous law of the Territory (either as originally enacted or as so altered) so far as it applies to a company existing immediately before the commencement of this Ordinance; or

(*b*) Part II., or any part of Part II., of Table F in Schedule Two to the Companies Act (either as originally enacted or as altered in pursuance of any statutory power) or the corresponding provisions of the corresponding Table in any corresponding previous law of the Territory (either as originally enacted or as so altered) so far as it applies or they apply to a company existing immediately before the commencement of this Ordinance.

(6.) Any register, fund or account kept under any provision of the repealed Ordinance shall be deemed to be part of any register, fund or account kept under the corresponding provision of this Ordinance.

(7.) Subject to this Ordinance, a company incorporated under the repealed Ordinance or under any corresponding previous law of the Territory shall be deemed to be incorporated under this Ordinance and this Ordinance extends and applies to the company accordingly, and any reference in this Ordinance, express or implied, to the date of registration of a company shall, in relation to such a company, be read as a reference to the date on which the company was registered under the repealed Ordinance or under the corresponding previous law of the Territory.

(8.) This Ordinance applies to a corporation registered, but not incorporated, under the repealed Ordinance or any corresponding previous law of the Territory in the same manner as it applies to corporations registered but not incorporated under this Ordinance.

(9.) Where, within a period of six months before the commencement of this Ordinance, a prospectus was registered under the repealed Ordinance and the prospectus complied with the requirements of the repealed Ordinance, the prospectus shall, for the purposes of this Ordinance, until the expiration of a period of six months after the date on which it was registered, be deemed to be a prospectus registered under this Ordinance.

(10.) A direction given by the Attorney-General under section thirty-two of the Companies Act and in force immediately before the commencement of this Ordinance shall, for the purposes of this Ordinance, be deemed to be a direction given by the Attorney-General under section twenty-two of this Ordinance.

(11.) Until the expiration of a period of three months after the commencement of this Ordinance, a person registered as a company auditor, or as a liquidator, under a law of a State corresponding with this Ordinance shall be deemed to be a registered company auditor or a registered liquidator, as the case may be, for the purposes of this Ordinance.

(12.) Where, before the date of commencement of this Ordinance, an inspector had been appointed to investigate the affairs of a company under Part IV. of the *Companies Ordinance* 1954-1961 and the investigation had not been completed before that date, that Part shall continue to apply to and in relation to the investigation as if this Ordinance had not been made.

(13.) The provisions of this Ordinance with respect to winding up, other than the provisions of Subdivision E of Division 4 of Part X., do not apply to any company the winding up of which was commenced before the commencement of this Ordinance and such a company shall be wound up in the same manner and with the same incidents as if this Ordinance had not been made, and, for the purposes of the winding up, the law under which the winding up commenced shall be deemed to remain in force.

(14.) In the application of paragraph (*b*) of sub-section (1.) of section nine of this Ordinance to a person who became indebted to a corporation before the commencement of this Ordinance, his indebtedness shall, until the expiration of five years after the commencement of this Ordinance, be disregarded if—

(*a*) the ordinary business of the corporation includes to a substantial degree the lending of money and the indebtedness was incurred in the ordinary course of that business; and

(*b*) the indebtedness would not have disqualified that person from appointment as an auditor of the corporation if this Ordinance had not been made.

(15.) Paragraph (*c*) of sub-section (1.) of section nine of this Ordinance does not apply to any person in relation to a proprietary company until the expiration of twelve months after the commencement of this Ordinance if he was appointed an auditor of that company before the commencement of this Ordinance.

(16.) Notwithstanding the repeal effected by sub-section (1.) of this section, the provisions of sub-sections (2.) and (4.) of section fifteen of the *Companies Ordinance* 1931-1949 continue to apply in relation to instruments, documents and certified copies handed over in pursuance of that section and in relation to the memorandum or articles, or a resolution or instrument, of a company to which that section applied.

(17.) In the application of the Trade Union Act 1881 of the State of New South Wales as a law of the Territory, the reference in section five of that Act to " The Companies Act " shall be read as a reference to this Ordinance.

(18.) The provisions of this section are in addition to and not in derogation of the provisions of the *Interpretation Ordinance* 1937-1959.

5.—(1.) In this Ordinance, unless the contrary intention appears—

Interpretation.
U.K., 11 & 12 Geo. VI., c. 38, ss. 154, 455.
N.S.W. ss. 6, 107, 137.
Vic. s. 3.
Qld. s. 5.
S.A. s. 8.
W.A. s. 3.
Tas. s. 3.

" annual general meeting ", in relation to a company, means a meeting of the company required to be held by section one hundred and thirty-six of this Ordinance;

" annual return " means—

(*a*) in relation to a company having a share capital—the return required to be made by section one hundred and fifty-eight of this Ordinance; and

(*b*) in relation to a company not having a share capital—the return required to be made by section one hundred and fifty-nine of this Ordinance,

and includes any document accompanying the return;

" articles " means articles of association;

" banking corporation " means a bank as defined in section five of the *Banking Act* 1959;

" books " includes accounts, deeds, writings and documents;

" branch register " means—

(*a*) in relation to a company—a branch register of members of the company kept in

pursuance of section one hundred and fifty-seven of this Ordinance; and

(*b*) in relation to a foreign company—a branch register of members of the company kept in pursuance of section three hundred and fifty-four of this Ordinance;

" calendar year " means a period of twelve months commencing on the first day of January;

" certified ", in relation to a copy of a document, means certified in the prescribed manner to be a true copy of the document and, in relation to a translation of a document, means certified in the prescribed manner to be a correct translation of the document into the English language;

" charge " includes a mortgage and an agreement to give or execute a charge or mortgage whether upon demand or otherwise;

" company " means a company incorporated pursuant to this Ordinance or pursuant to any corresponding previous law of the Territory;

" company having a share capital " includes an unlimited company with a share capital;

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

" company limited by shares " means a company formed on the principle of having the liability of its members limited by the memorandum of the company to the amount (if any) unpaid on the shares respectively held by them;

" contributory ", in relation to a company, means a person liable to contribute to the assets of the company in the event of its being wound up, and includes the holder of fully paid shares in the company and, prior to the final determination of the persons who are contributories, includes any person alleged to be a contributory;

" corporation " means any body corporate whether formed or incorporated in the Territory or outside

the Territory, and includes a foreign company, but does not include—

(*a*) a body corporate incorporated within the Commonwealth that is a public authority or an instrumentality or agency of the Crown;

(*b*) a corporation sole;

(*c*) a society registered under the *Co-operative Societies Ordinance* 1939-1962; or

(*d*) an association, society, institution or body incorporated under the *Associations Incorporation Ordinance* 1953-1962;

" creditors' voluntary winding up " means a winding up under Division 3 of Part X., other than a members' voluntary winding up;

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

" default penalty " means a default penalty within the meaning of section three hundred and eighty of this Ordinance;

" director " includes any person occupying the position of director of a corporation, by whatever name called, and any person in accordance with whose directions or instructions the directors of a corporation are accustomed to act;

" document " includes summons, order and other legal process, and notice and register;

" emoluments ", in relation to a director or auditor of a company, includes any fees, percentages or other payments made (including the money value of any allowances or perquisites), or consideration given, directly or indirectly, to the director or auditor by the company or by a holding company or a subsidiary of that company, whether made or given to him in his capacity as a director or auditor or otherwise in connexion with the affairs of that company or of the holding company or the subsidiary;

" exempt proprietary company " means a proprietary company no share in which is, by virtue of sub-sections (7.) and (8.) of this section, deemed to be owned by a public company;

" expert " includes engineer, valuer, accountant and any other person whose profession or reputation gives authority to a statement made by him;

" filed " means filed under this Ordinance or any corresponding previous law of the Territory;

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

" foreign company " means—

(*a*) a company, corporation, society, association or other body incorporated outside the Territory; or

(*b*) an unincorporated society, association or other body which, under the law of its place of origin, may sue or be sued, or hold property in the name of the secretary or other officer of the body or association duly appointed for that purpose, and which does not have its head office or principal place of business in the Territory;

" limited company " means a company limited by shares or by guarantee or both by shares and guarantee, but does not include a no liability company;

" lodged " means lodged under this Ordinance or any corresponding previous law of the Territory;

" manager ", in relation to a company, means the principal executive officer of the company for the time being by whatever name called and whether or not he is a director;

" marketable securities " means debentures, funds, stocks, shares or bonds of any Government or local government authority or of any corporation or society, and includes any right or option in respect of shares in any corporation and any interest as defined in sub-section (1.) of section seventy-six of this Ordinance;

" members' voluntary winding up " means a winding up under Division 3 of Part X. where a declaration has been made and lodged in pursuance of section two hundred and fifty-seven of this Ordinance;

" memorandum " means memorandum of association;

" minimum subscription ", in relation to any shares offered to the public for subscription, means the amount stated in the prospectus relating to the offer in pursuance of paragraph (*a*) of clause 4 of the

Fifth Schedule as the minimum amount that, in the opinion of the directors, must be raised by the issue of the shares so offered;

" mining company " means a company the sole objects of which are mining purposes;

" mining purposes " means purposes of prospecting for or obtaining by any mode or method, or of selling or otherwise disposing of, ores, metals, minerals and all products of mining, and includes all or any of such purposes whether carried on in the Territory or elsewhere and purposes necessary for or incidental to the foregoing purposes, but does not include quarrying operations for the sole purpose of obtaining stone for building, roadmaking or similar purposes;

" no liability company " means a company in which the acceptance of a share does not constitute a contract to pay calls;

" officer ", in relation to a corporation, includes—

(*a*) a director, secretary or employee of the corporation;

(*b*) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; and

(*c*) a liquidator of the corporation appointed in a voluntary winding up,

but does not include—

(*d*) a receiver who is not also a manager;

(*e*) a receiver and manager appointed by the Court; or

(*f*) a liquidator appointed by the Court or by the creditors;

" official liquidator " means a person appointed as an official liquidator under section eleven of this Ordinance;

" official manager " means a person appointed as an official manager under Part IX.;

" principal register ", in relation to a company, means the register of members of the company kept in pursuance of section one hundred and fifty-one of this Ordinance;

" printed " includes type-written, lithographed or reproduced by any mechanical means;

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" profit and loss account " includes income and expenditure account, revenue account and any other account showing the results of the business of a corporation for a period;

" promoter ", in relation to a prospectus issued by or in connexion with a corporation, means a promoter of the corporation who was a party to the preparation of the prospectus or of any relevant portion thereof, but does not include a person by reason only of his acting in a professional capacity;

" proprietary company " means—

(*a*) a company that, immediately prior to the commencement of this Ordinance, was a proprietary company under the provisions of the repealed Ordinance;

(*b*) a company incorporated as a proprietary company by virtue of section fifteen of this Ordinance; or

(*c*) a company converted into a proprietary company pursuant to the provisions of sub-section (1.) of section twenty-six of this Ordinance,

being a company that has not ceased to be a proprietary company under section twenty-six or twenty-seven of this Ordinance;

" prospectus " means a prospectus, notice, circular, advertisement or invitation inviting applications or offers from the public to subscribe for or purchase, or offering to the public for subscription or purchase, any shares in or debentures of, or any units of shares in or units of debentures of, a corporation or proposed corporation;

" public company " means a company other than a proprietary company;

" registered " means registered under this Ordinance or any corresponding previous law of the Territory;

" registered company auditor " means a person registered as such under section nine of this Ordinance and, in relation to a corporation that is not a company, includes a person qualified to act as the auditor of the corporation under the law of the place in which the corporation is incorporated;

" registered liquidator " means a registered company auditor who has been registered by the Board as a liquidator;

" resolution for voluntary winding up " means the resolution referred to in section two hundred and fifty-four of this Ordinance;

" rules " means Rules of Court made under section twenty-eight of the *Australian Capital Territory Supreme Court Act* 1933-1960;

" Schedule " means Schedule to this Ordinance;

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

" statutory meeting " means the meeting referred to in section one hundred and thirty-five of this Ordinance;

" statutory report " means the report referred to in section one hundred and thirty-five of this Ordinance;

" Table A " means Table A in the Fourth Schedule;

" Table B " means Table B in the Fourth Schedule;

" the Board " means the Companies Auditors Board constituted under this Ordinance;

" the Companies Act " means the Companies Act, 1936 of the State of New South Wales in its application in the Territory by force of, and as modified by, the *Companies Ordinance* 1954 or the *Companies Ordinance* 1954-1961;

" the Court " means the Supreme Court or the Judge of the Supreme Court;

" the Registrar " means the Registrar of Companies holding office under this Ordinance, and includes an Acting Registrar of Companies and a Deputy Registrar of Companies so holding office;

" the repealed Ordinance " means the *Companies Ordinance* 1954 or the *Companies Ordinance* 1954-1961, and includes the Companies Act;

" the Territory " or " the Australian Capital Territory " includes the Territory accepted by the Commonwealth in pursuance of the *Jervis Bay Territory Acceptance Act* 1915;

" this Ordinance " includes the regulations;

" unit ", in relation to a share, debenture or other interest, means any right or interest therein, by whatever term called;

" unlimited company " means a company formed on the principle of having no limit placed on the liability of its members.

(2.) For the purposes of this Ordinance, a person shall not be regarded as a person in accordance with whose directions or instructions the directors of a company are accustomed to act by reason only that the directors act on advice given by him in a professional capacity.

(3.) For the purposes of this Ordinance, a statement included in a prospectus or statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included.

(4.) For the purposes of this Ordinance, a statement shall be deemed to be included in a prospectus or statement in lieu of prospectus if it is contained in a report or memorandum appearing on the face thereof or it is by reference incorporated therein or issued therewith.

(5.) For the purposes of this Ordinance, an invitation to the public to deposit money with or to lend money to a corporation shall be deemed to be an invitation to subscribe for or purchase debentures of the corporation.

(6.) A reference in this Ordinance to offering shares or debentures to the public shall, unless the contrary intention appears, be construed as including a reference to offering shares or debentures to any section of the public, whether selected as clients of the person issuing the prospectus or in any other manner, but a *bona fide* offer or invitation with respect to shares or debentures shall not be deemed to be an offer to the public if it is—

(*a*) an offer or invitation to enter into an underwriting agreement;

(*b*) made to a person whose ordinary business it is to buy or sell shares or debentures, whether as principal or agent;

(*c*) made to existing members or debenture holders of a corporation and relates to shares in or debentures of that corporation; or

(*d*) made to existing members of a company within the meaning of section two hundred and seventy of this Ordinance and relates to shares in the corporation within the meaning of that section.

(7.) For the purposes of the definition of " exempt proprietary company " in sub-section (1.) of this section, a share in a proprietary company shall be deemed to be owned by a

public company if any beneficial interest in the share is held, directly or indirectly, by—

(*a*) a public company;

(*b*) a proprietary company a beneficial interest in a share in which is held, directly or indirectly, by a public company; or

(*c*) a proprietary company a beneficial interest in a share in which is held, directly or indirectly, by a proprietary company a beneficial interest in a share in which is held, directly or indirectly, by—

(i) a public company; or

(ii) another proprietary company a beneficial interest in a share in which is held, directly or indirectly, otherwise than by a natural person.

(8.) For the purposes of, but without limiting the generality of, the last preceding sub-section—

(*a*) a reference in that sub-section to a public company shall be read as including a reference to a foreign company other than a foreign company that (whether or not Division 3 of Part XI. applies to it) is a foreign company of a kind referred to in sub-section (5.) of section three hundred and forty-eight of this Ordinance;

(*b*) a reference in that sub-section to a public company or to a proprietary company shall be read as not including a reference to a company in respect of which a licence under section twenty-four of this Ordinance, or under any corresponding previous law of the Territory, is in force;

(*c*) where a corporation holds a beneficial interest in a redeemable preference share in a proprietary company and—

(i) no voting rights attach to the share; or

(ii) any voting rights attaching to the share are exercisable only in special circumstances and do not include the right (except where any dividend in respect of the share is in arrears) to vote at an election of directors of the proprietary company,

the share shall be treated as if the beneficial interest in the share were held by a natural person; and

(*d*) a person (including a corporation) shall be deemed to hold a beneficial interest in a share—

(i) if that person, either alone or together with other persons, is entitled (otherwise than as trustee for, on behalf of or on account of, another person) to receive, directly or indirectly, any dividends in respect of the share or to exercise, or to control the exercise of, any rights attaching to the share; or

(ii) if that person, being a corporation, holds any beneficial interest in a share of another corporation which holds, or a subsidiary of which holds, any beneficial interest in that first-mentioned share.

(9.) A reference in this Ordinance to a law of the Territory shall be read as including a reference to a law of the State of New South Wales in its application in the Territory.

Meanings of "subsidiary company", "holding company" and "related company".
U.K. s. 154.
N.S.W. s. 107.
Vic. s. 3 (4).
Qld. s. 137.
S.A. s. 146.
W.A. s. 130.
Tas. s. 3 (5).

6.—(1.) For the purposes of this Ordinance, a corporation shall, subject to the provisions of sub-section (3.) of this section, be deemed to be a subsidiary of another corporation if—

(*a*) that other corporation—

(i) controls the composition of the board of directors of the first-mentioned corporation;

(ii) controls more than half of the voting power of the first-mentioned corporation; or

(iii) holds more than half of the issued share capital of the first-mentioned corporation (excluding any part thereof which carries no right to participate beyond a specified amount in a distribution of either profits or capital); or

(*b*) the first-mentioned corporation is a subsidiary of any corporation which is that other corporation's subsidiary.

(2.) For the purposes of the last preceding sub-section, the composition of a corporation's board of directors shall be deemed to be controlled by another corporation if that other corporation by the exercise of some 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 for the purposes of this provision that other corporation shall be deemed to have power to make such an appointment if—

(*a*) a person cannot be appointed as a director without the exercise in his favour by that other corporation of such a power; or

(*b*) a person's appointment as a director follows necessarily from his being a director or other officer of that other corporation.

(3.) In determining whether one corporation is a subsidiary of another corporation—

(*a*) any shares held or power exercisable by that other corporation in a fiduciary capacity shall be treated as not held or exercisable by it;

(*b*) subject to paragraphs (*c*) and (*d*) of this sub-section, any shares held or power exercisable—

(i) by any person as a nominee for that other corporation (except where that other corporation is concerned only in a fiduciary capacity); or

(ii) by, or by a nominee for, a subsidiary of that other corporation, not being a subsidiary which is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by that other corporation;

(*c*) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned corporation, or of a trust deed for securing any issue of such debentures, shall be disregarded; and

(*d*) any shares held or power exercisable by, or by a nominee for, that other corporation or its subsidiary (not being held or exercisable as mentioned in paragraph (*c*) of this sub-section) shall be treated as not held or exercisable by that other corporation if the ordinary business of that other corporation or its subsidiary, as the case may be, includes the lending of money and the shares are held or the power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(4.) A reference in this Ordinance to the holding company of a company or other corporation shall be read as a reference to a corporation of which that last-mentioned company or corporation is a subsidiary.

(5.) Where a corporation—

(*a*) is the holding company of another corporation;

(*b*) is a subsidiary of another corporation; or

(*c*) is a subsidiary of the holding company of another corporation,

that first-mentioned corporation and that other corporation shall, for the purposes of this Ordinance, be deemed to be related to each other.

PART II.—ADMINISTRATION.

Registrar of Companies, &c.
N.S.W. s. 7.
Vic. s. 4.
Qld. ss. 8, 381A.
S.A. s. 315.
W.A. s. 391.

7.—(1.) For the purposes of this Ordinance, the Attorney-General may appoint—

(*a*) a Registrar of Companies;

(*b*) an Acting Registrar of Companies to act in the office of Registrar of Companies during a vacancy in that office or during the illness or absence of the Registrar of Companies; and

(*c*) such Deputy Registrars of Companies and other officers as the Attorney-General considers necessary.

(2.) An Acting Registrar of Companies while acting in the office of Registrar of Companies has all the powers, and shall perform all the duties and exercise all the functions, of the Registrar of Companies.

(3.) A Deputy Registrar of Companies may, subject to the directions of the Registrar, exercise any power or perform any function of the Registrar.

(4.) The appointment of a Deputy Registrar of Companies does not affect the exercise of a power or the performance of a function by the Registrar of Companies.

(5.) The Registrar shall have and use as the seal of his office a seal in such form as the Attorney-General, by notice in the *Gazette*, determines.

(6.) All courts, judges and persons acting judicially shall take judicial notice of—

(*a*) the signature of any person who holds or has held the office of Registrar, Acting Registrar or Deputy Registrar and of the fact that that person holds or has held that office; and

(*b*) the seal of the Registrar.

(7.) For the purpose of ascertaining whether a corporation is complying with the provisions of this Ordinance, the Registrar or a person authorized by him may inspect, and may require an officer of the corporation to produce to him, any book, minute book, register or record required by or under this Ordinance to be kept by the corporation.

(8.) A person shall not make an inspection in pursuance of the last preceding sub-section unless he has made a declaration in the prescribed form.

(9.) A person—

(*a*) who makes an inspection in pursuance of sub-section (7.) of this section before he has made a declaration referred to in the last preceding sub-section; or

(*b*) who after making such a declaration, except for the purposes of this Ordinance or in the course of any criminal proceedings, makes a record of, or divulges or communicates to any other person, any information that he has acquired by reason of such an inspection,

is guilty of an offence against this Ordinance.

Penalty: One hundred pounds.

(10.) A person shall comply with any requirement made in pursuance of sub-section (7.) of this section by the Registrar or a person authorized by the Registrar.

Penalty: One hundred pounds.

(11.) A person shall not obstruct or hinder the Registrar or person authorized by the Registrar while the Registrar or that person is exercising any of the powers referred to in sub-section (7.) of this section.

Penalty: One hundred pounds.

(12.) There shall be paid to the Registrar—

(*a*) the fees specified in the Second Schedule; and

(*b*) such other fees as are prescribed.

(13.) Where a fee is payable to the Registrar for or in respect of the lodging of a document with the Registrar, the document shall be deemed not to have been lodged until the fee has been paid to the Registrar.

Companies Auditors Board.

Vic. s. 5. S.A. ss. 370–371. W.A. ss. 137–138, 402, 406. Tas. s. 138.

8.—(1.) For the purposes of this Ordinance, there shall be a Companies Auditors Board, the functions of which are—

(*a*) to report to the Attorney-General on any matters relating to the operation of Part VI. which the Board has investigated either on its own motion or at the request of the Attorney-General; and

(*b*) to effect and control the registration of company auditors and liquidators as hereinafter prescribed.

(2.) The Board shall consist of three persons appointed by the Attorney-General of whom—

(*a*) one shall be a duly qualified legal practitioner of not less than five years' standing who shall be the Chairman of the Board;

(*b*) one shall be selected from a panel of three persons, being persons resident in the Territory, nominated by the New South Wales State Council of The Institute of Chartered Accountants in Australia; and

(*c*) one shall be selected from a panel of three persons, being persons resident in the Territory, nominated by the Divisional Council of the New South Wales Division of the Australian Society of Accountants.

(3.) A member of the Board may, with the approval of the Attorney-General, appoint a person to be his deputy, and the deputy shall hold office during the pleasure of the Attorney-General.

(4.) A person appointed to be deputy of the Chairman of the Board shall be a duly qualified legal practitioner of not less than five years' standing.

(5.) The deputy of a member of the Board is, in the event of the absence of the member of whom he is the deputy from a meeting of the Board, entitled to attend that meeting and, when so attending, shall be deemed to be a member of the Board and, in the case of the deputy of the Chairman of the Board, shall be deemed to be the Chairman of the Board.

(6.) An appointment of a deputy and an act done by him as such shall not be questioned on the ground that the occasion for the exercise of his powers or functions had not arisen or had ceased.

(7.) At a meeting of the Board, two members constitute a quorum.

(8.) A member of the Board holds office for such period, not exceeding three years, as is fixed by the terms of his appointment, but is eligible for reappointment.

(9.) If a member of the Board—

(*a*) is absent, without leave of the Board, from three consecutive meetings of the Board;

(*b*) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;

(*c*) is convicted of an offence involving fraud or dishonesty punishable on conviction by imprisonment for three months or more; or

(*d*) becomes of unsound mind,

the Attorney-General shall, by notice in the *Gazette*, declare that the office of the member is vacant, and thereupon the office shall be deemed to be vacant.

(10.) A member of the Board may resign his office by writing under his hand addressed to the Attorney-General.

(11.) A member of the Board, and the deputy of a member of the Board, shall be paid such fees and allowances as are prescribed.

Company auditors and liquidators. Vic. s. 5. S.A. ss. 370-371. W.A. ss. 137-138, 402, 456. Tas. s. 138.

9.—(1.) A person shall not knowingly consent to be appointed, and shall not knowingly act, as auditor of a company and shall not prepare, for or on behalf of a company, any report required by this Ordinance to be prepared by a registered company auditor—

(*a*) if he is not a registered company auditor;

(*b*) if he is indebted to the company or to a corporation that is deemed to be related to that company by virtue of sub-section (5.) of section six of this Ordinance in an amount exceeding Five hundred pounds; or

(*c*) except where the company is an exempt proprietary company, if he is—

(i) an officer of the company;

(ii) a partner, employer or employee of an officer of the company; or

(iii) a partner or employee of an employee of an officer of the company.

Penalty: One hundred pounds.

(2.) For the purposes of the last preceding sub-section, a person shall be deemed to be an officer of a company if he is an officer of a corporation that is deemed to be related to the company by virtue of sub-section (5.) of section six of this Ordinance or, except where the Board if it thinks fit in the circumstances of the case directs otherwise, he has, at any time within the preceding period of twelve months, been an officer or promoter of the company or of such a corporation.

(3.) For the purposes of this section, a person shall not be deemed to be an officer of a company by reason only of his having been appointed as auditor of a corporation or, for any purpose relating to taxation, a public officer of a corporation.

(4.) A firm shall not consent to be appointed, and shall not act, as auditor of a company and shall not prepare, for or on behalf of a company, any report required by this Ordinance to be prepared by a registered company auditor unless—

(*a*) all the partners of the firm resident in a State or Territory of the Commonwealth are registered company auditors and, where the business name under which they are carrying on business is not registered under the *Business Names Ordinance* 1956-1962, a return in the prescribed form showing the full names and addresses of all the partners of the firm has been lodged with the Registrar; and

(*b*) no partner is disqualified under the provisions of paragraph (*b*) or (*c*) of sub-section (1.) of this section from acting as the auditor of the company.

(5.) If a firm contravenes the last preceding sub-section, each partner of the firm is guilty of an offence against this Ordinance.

Penalty: One hundred pounds.

(6.) A company or person shall not appoint a person as auditor of a company unless that last-mentioned person has, prior to such appointment, consented in writing to act as such auditor, and a company or person shall not appoint a firm as auditor of a company unless the firm has, prior to such appointment, consented in writing under the hand of at least one partner of the firm to act as such auditor.

(7.) A person—

(*a*) who is a member of The Institute of Chartered Accountants in Australia or the Australian Society of Accountants or any other body established outside Australia that is, on the recommendation of the Board, prescribed as a body for the purposes of this sub-section;

(*b*) who is a registered company auditor in any State or in any other Territory of the Commonwealth;

(*c*) who holds a degree or diploma from any University in the Commonwealth and has passed examinations in the course for such degree or diploma in such subjects, under whatever name, as the appropriate authority of the University certifies to the Board to represent a course of study in accountancy or auditing of three years' duration and in commercial law (including company law) of two years' duration;

(*d*) who holds the certificate in accountancy of a prescribed Institute of Technology or Technical College; or

(*e*) who has satisfied the Board that he has a thorough knowledge of accounts and auditing and of the provisions of this Ordinance and of such other subjects as are prescribed,

is, if the Board is satisfied with his general conduct and character, entitled on payment of the prescribed fee to be registered as a company auditor or, if he is a registered company auditor, to the renewal of his registration.

(8.) A registered company auditor may apply to the Board for registration as a liquidator and the Board, if it is satisfied as to his experience and capacity, shall on payment of the prescribed fee register such person as a registered liquidator.

(9.) Every registration, including a renewal of registration, of a company auditor or liquidator shall remain in force until the thirty-first day of March in the year next following the year in which the registration was effected or deemed to have been effected.

(10.) The Board, after giving notice to any person who is a registered company auditor or a registered liquidator, may inquire into the conduct and character and the abilities of the person, but shall not do so without giving to the person an opportunity of being heard.

(11.) For the purposes of an inquiry pursuant to the last preceding sub-section, the Chairman of the Board may, by notice in the prescribed form, require any person to appear at the inquiry and to give evidence on oath or affirmation (which the Chairman is hereby authorized to administer) as to any matter in relation to the subject matter of the inquiry and the notice may require the production of all or any books and documents in the custody or under the control of that person.

(12.) If, at any inquiry by the Board, a person who is a registered company auditor or a registered liquidator is found to have been guilty of any conduct discreditable to an auditor or liquidator, as the case may be, or is found to be incapable of performing the duties of a registered company auditor or liquidator, as the case may be, the Board may as it thinks fit punish or deal with him in any one or more of the following ways:—

(*a*) admonish or reprimand him;
(*b*) require him to pay the costs of and incidental to the inquiry by the Board;
(*c*) require him to give an undertaking to abstain from some specific conduct;
(*d*) impose on him a fine not exceeding Fifty pounds;
(*e*) suspend his registration for a period not exceeding one year;
(*f*) cancel his registration and order the removal of his name from the register.

(13.) The amount of any fine or costs so imposed may be recovered in any court of competent jurisdiction as a debt due to the Commonwealth.

(14.) A person aggrieved by a decision of the Board may, within three months from the date thereof, appeal to the Court from such decision and thereupon the Court may confirm, vary or reverse the decision and, if it thinks fit, may direct the Board to register any person whom the Board has refused to register.

(15.) Where the registration of a person has been cancelled under this section, that person shall not be re-registered without the express direction of the Board.

Disqualification of liquidators.
Vic. s. 202 (1).
S.A. ss. 293, 371.
W.A. s. 184.

10.—(1.) Subject to this section, a person shall not, except with the leave of the Court, consent to be appointed, and shall not act, as liquidator of a company—

(*a*) if he is not a registered liquidator or a corporation authorized by law to act as a liquidator;

(*b*) if he is indebted to the company or to a corporation that is deemed to be related to the company by virtue of sub-section (5.) of section six of this Ordinance in an amount exceeding Five hundred pounds; or

(*c*) if he is—

(i) an officer of the company;

(ii) a partner, employer or employee of an officer of the company; or

(iii) a partner or employee of an employee of an officer of the company.

Penalty: One hundred pounds.

(2.) Paragraph (*a*) of the last preceding sub-section does not apply to a members' voluntary winding up of an exempt proprietary company, and paragraph (*c*) of that sub-section does not apply—

(*a*) to a members' voluntary winding up; or

(*b*) to a creditors' voluntary winding up if, by a resolution carried by a majority of the creditors in number and value present in person or by proxy and voting at a meeting of which seven days' notice has been given to every creditor stating the object of the meeting, it is determined that that paragraph shall not so apply.

(3.) For the purposes of sub-section (1.) of this section, a person shall be deemed to be an officer of a company if he is an officer of a corporation that is deemed to be related to the company by virtue of sub-section (5.) of section six of this Ordinance or has, at any time within the preceding period of twenty-four months, been an officer or promoter of the company or of such a corporation.

(4.) A person shall not be appointed as liquidator of a company unless he has, prior to such appointment, consented in writing to act as such liquidator.

(5.) Nothing in this section affects any appointment of a liquidator made before the commencement of this Ordinance.

Official liquidators. N.S.W. s. 22; Vic. s. 8. W.A. s. 196.

11.—(1.) For the purpose of conducting proceedings in winding up companies and assisting the Court therein, the Attorney-General may from time to time appoint as many registered liquidators as he thinks fit to be official liquidators, and may require of each of them such security as is prescribed for the due fulfilment of his duties.

(2.) Where security given under the last preceding subsection is a bond to the Commonwealth with or without sureties, the Court may, on application and on being satisfied that any condition of the bond has been broken, order the ~~Master~~ of the Court to assign the bond to any person named in the order.

(3.) The person to whom the bond is assigned, or his executors or administrators, shall be entitled to sue upon the bond in his or their own name or names as if the bond had in the first instance been given to him or them and shall be entitled to receive thereon as trustee for all persons interested the full amount recoverable in respect of any breach of the condition of the bond.

Registers, records, documents, returns, &c.
N.S.W. ss. 369, 378.
Vic. s. 6.
Qld. ss. 9, 377.
S.A. ss. 316, 320.
W.A. ss. 392 396, 401.
Tas. s. 7.

12.—(1.) The Registrar shall, subject to this Ordinance, keep such registers as he considers necessary in such form as he thinks fit.

(2.) A person may, on payment of the prescribed fee—

(*a*) inspect any document filed or lodged with the Registrar; or

(*b*) require a certificate of the incorporation of any company or any other certificate issued under this Ordinance or a copy of or extract from any document kept by the Registrar to be given or certified by the Registrar.

(3.) A copy of or extract from any document filed or lodged at the office of the Registrar, or a certificate issued by the Registrar, certified to be a true copy or extract under the hand and seal of the Registrar is, in any proceedings, admissible in evidence as of equal validity with the original document or certificate.

(4.) In any proceedings, a certificate under the hand and seal of the Registrar that a requirement of this Ordinance specified in the certificate—

(*a*) had or had not been complied with at a date or within a period specified in the certificate; or

(*b*) had been complied with upon a date specified in the certificate but not before the date,

is evidence of the matters specified in the certificate.

(5.) If the Registrar is of opinion that any document submitted to him—

(*a*) contains matter contrary to law;

(*b*) by reason of any omission or misdescription has not been duly completed;

(*c*) does not comply with the requirements of this Ordinance; or

(*d*) contains any error, alteration or erasure,

he may refuse to register or receive the document and request that the document be appropriately amended or completed and re-submitted or that a fresh document be submitted in its place.

(6.) A person aggrieved by the refusal of the Registrar to register any corporation or to register or receive any document, or by any other act or decision of the Registrar, may appeal to the Court and the Court may confirm the refusal, act or decision or give such directions in the matter as seem proper or otherwise determine the matter, but this sub-section does not apply to any act or decision of the Registrar—

(*a*) in respect of which any provision in the nature of an appeal or review is expressly provided in this Ordinance; or

(*b*) which is declared by this Ordinance to be conclusive or final or is embodied in any document declared by this Ordinance to be conclusive evidence of any act, matter or thing.

(7.) The Registrar may, if in his opinion it is no longer necessary or desirable to retain them, destroy, or give to the National Library of Australia—

(*a*) in the case of any corporation—

(i) any return of allotment of shares for cash which has been lodged or filed for not less than two years;

(ii) any annual return or balance sheet that has been lodged or filed for not less than seven years or any document creating or evidencing a charge, or the complete or partial satisfaction of a charge, where a memorandum of satisfaction of the charge has been registered for not less than seven years; or

(iii) any other document (other than the memorandum and articles or any other document affecting them) which has been lodged, filed or registered for not less than fifteen years; or

(*b*) in the case of a corporation that has been dissolved or has ceased to be registered for not less than fifteen years, any document lodged, filed or registered.

(8.) If a corporation or person, having made default in complying with—

(*a*) any provision of this Ordinance or of any other law which requires the lodging or filing in any manner with the Registrar of any return, account or other document or the giving of notice to him on any matter; or

(*b*) any request of the Registrar to amend or complete and re-submit any document or to submit a fresh document,

fails to make good the default within fourteen days after the service on the corporation or person of a notice requiring it to be done, the Court or the Court of Petty Sessions may, on an application by any member or creditor of the corporation or by the Registrar, make an order directing the corporation or any officer thereof or such person to make good the default within such time as is specified in the order.

(9.) Any such order may provide that all costs of and incidental to the application shall be borne by the corporation or by any officers of the corporation responsible for the default or by such person.

(10.) Nothing in this section shall prejudice the operation of any law imposing penalties on a corporation or its officers or such person in respect of any such default as aforesaid.

Relodging of lost registered documents.
Vic. s. 7.
S.A. s. 378.
W.A. s. 413.
Tas. s. 9.

13.—(1.) If, in the case of any corporation incorporated or registered in the Territory, the memorandum or articles or any other document relating to the corporation filed or lodged with the Registrar has been lost or destroyed, the corporation may apply to the Registrar for leave to lodge a copy of the document as originally filed or lodged.

(2.) On such application being made the Registrar may direct notice thereof to be given to such persons and in such manner as he thinks fit.

(3.) The Registrar, upon being satisfied—

(*a*) that the original document has been lost or destroyed;

(*b*) of the date of the filing or lodging thereof with the Registrar; and

(*c*) that a copy of such document produced to the Registrar is a correct copy,

may certify upon such copy that he is so satisfied and direct that such copy be lodged in the manner required by law in respect of the original.

(4.) Upon the lodgment the copy has, from such date as is mentioned in the certificate as the date of the filing or lodging of the original with the Registrar, the same force and effect for all purposes as the original.

(5.) The Court may, by order made upon application by any person aggrieved and after notice to any other person as directed by the Court, confirm, vary or rescind the certificate, and the order may be lodged with the Registrar and shall be registered by him, but no payments, contracts, dealings, acts or things made, had or done in good faith before the registration of such order and upon the faith of and in reliance upon the certificate shall be invalidated or affected by such variation or rescission.

(6.) A fee is not payable upon the lodging of a document lodged in pursuance of this section.

PART III.—CONSTITUTION OF COMPANIES.

Division 1.—Incorporation.

Formation of companies.
N.S.W. ss. 8-9.
Vic. s. 12.
Qld. ss. 12-13.
S.A. s. 10.
W.A. ss. 11-12.
Tas. s. 12.

14.—(1.) Subject to this Ordinance, any five or more persons, or (where the company to be formed will be a proprietary company) any two or more persons, associated for any lawful purpose may, by subscribing their names to a memorandum and complying with the requirements of this Ordinance as to registration, form an incorporated company.

(2.) A company may be—

(*a*) a company limited by shares;

(*b*) a company limited by guarantee;

(*c*) a company limited both by shares and by guarantee;

(*d*) an unlimited company; or

(*e*) in the case of a mining company, a no liability company.

(3.) No association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any business which has for its object the acquisition of gain by the association or partnership or the individual members thereof unless it is incorporated under this Ordinance or is formed in pursuance of some other Ordinance or letters patent.

Proprietary company.
U.K. s. 28.
N.S.W. s. 37
Vic. s. 13.
Qld. s. 38.
S.A. s. 37.
W.A. s. 37.
Tas. s. 13.

15.—(1.) A company having a share capital (other than a no liability company) may be incorporated as a proprietary company if its memorandum or articles—

(*a*) restrict the right to transfer its shares;

(*b*) limit to not more than fifty the number of its members (counting joint holders of shares as one person and not counting any person in the employment of the company or of its subsidiary or any person who, while previously in the employment of the company or of its subsidiary, was and thereafter has continued to be a member of the company);

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

(*d*) prohibit any invitation to the public to deposit money with the company for fixed periods or payable at call, whether bearing or not bearing interest.

(2.) A proprietary company may, by special resolution, alter any restriction on the right to transfer its shares included in its memorandum or articles or any limitation on the number of its members included in its memorandum or articles, but not so that the memorandum and articles of the company cease to include the limitation required by paragraph (*b*) of the last preceding sub-section to be included in the memorandum or articles of a company that may be incorporated as a proprietary company.

Registration and incorporation.
U.K. ss. 12–15 26.
N.S.W. ss. 27–28, 30, 36.
Vic. s. 14.
Qld. ss. 24–25, 27, 37.
S.A. ss. 23, 26, 36.
W.A. ss. 24–26, 36.
Tas. s. 14.

16.—(1.) Persons desiring the incorporation of a company shall lodge the memorandum and the articles (if any) of the proposed company with the Registrar together with the other documents required to be lodged by or under this Ordinance, and the Registrar, on payment of the appropriate fees, shall, subject to this Ordinance, register the company by registering the memorandum and articles (if any).

(2.) The Registrar may, if he thinks fit, require to be lodged with him a statutory declaration in the prescribed form by a qualified legal practitioner engaged in the formation of the company or by a person named in the articles as a director or secretary of the company stating that all or any of the requirements of this Ordinance have been complied with, and the Registrar may accept such a declaration as sufficient evidence of compliance.

(3.) On the registration of the memorandum, the Registrar shall certify under his hand and seal by a certificate in the prescribed form that the company is, on and from the date specified in the certificate, incorporated and that the company is—

(*a*) a company limited by shares;

(*b*) a company limited by guarantee;

(*c*) a company limited both by shares and by guarantee;

(*d*) an unlimited company; or
(*e*) a no liability company,

as the case may be, and, where applicable, that it is a proprietary company.

(4.) On and from the date of incorporation specified in the certificate of incorporation, but subject to this Ordinance, the subscribers to the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum capable forthwith of exercising all the functions of an incorporated company and of suing and being sued and having perpetual succession and a common seal with power to hold land, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is provided by this Ordinance.

(5.) The subscribers to the memorandum shall be deemed to have agreed to become members of the company and, on the incorporation of the company, shall be entered as members in its register of members, and every other person who agrees to become a member of a company and whose name is entered in its register of members shall be a member of the company.

Membership of holding company. U.K. s. 27.

17.—(1.) A corporation cannot be a member of a company that is its holding company, and any allotment or transfer of shares in a company to its subsidiary is void.

(2.) The last preceding sub-section does not apply where the subsidiary is concerned as personal representative, or where it is concerned as trustee, unless the holding company or a subsidiary of the holding company is beneficially interested under the trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of a business that includes the lending of money.

(3.) This section does not prevent a subsidiary that is, at the commencement of this Ordinance, a member of its holding company from continuing to be such a member but, subject to the last preceding sub-section, the subsidiary has no right to vote at meetings of the holding company or of any class of members of the holding company.

(4.) This section does not prevent a subsidiary from continuing to be a member of its holding company if, at the time when it becomes a subsidiary of the holding company, it already holds shares in the holding company, but—

(*a*) subject to sub-section (2.) of this section, the subsidiary has no right to vote at meetings of the holding company or of any class of members of the holding company; and

(*b*) the subsidiary shall, within the period of twelve months or such longer period as the Court may allow after becoming the subsidiary of its holding company, dispose of all of its shares in the holding company.

(5.) Subject to sub-section (2.) of this section, sub-sections (1.), (3.) and (4.) of this section apply in relation to a nominee for a corporation that is a subsidiary as if references in those sub-sections to such a corporation included references to a nominee for it.

(6.) In relation to a holding company that is either a company limited by guarantee or an unlimited company, any reference in this section to shares, whether or not the company has a share capital, shall be construed as including a reference to the interest of its members as such, whatever the form of that interest.

Requirements as to memorandum.
N.S.W. ss. 10–13.
Vic. s. 15.
Qld. ss. 14, 15.
S.A. ss. 14, 35.
W.A. ss. 13–15.
Tas. s. 15.

18.—(1.) The memorandum of a company shall be printed, divided into numbered paragraphs, and dated, and shall state, in addition to other requirements—

(*a*) the name of the company;

(*b*) the objects of the company;

(*c*) unless the company is an unlimited company, the amount of share capital (if any) with which the company proposes to be registered and the division thereof into shares of a fixed amount;

(*d*) if the company is a company limited by shares, that the liability of the members is limited;

(*e*) if the company is a company limited by guarantee, that the liability of the members is limited and that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding a specified amount in addition to the amount (if any) unpaid on any shares held by him;

(*f*) if the company is an unlimited company, that the liability of the members is unlimited;

(*g*) if the company is a no liability company, that the acceptance of shares in the company shall not

constitute a contract to pay calls in respect of the shares or to make any contribution towards the debts and liabilities of the company;

(*h*) the full names, and the addresses and the occupations, of the subscribers to the memorandum; and

(*i*) that such subscribers are desirous of being formed into a company in pursuance of the memorandum and (where the company is to have a share capital) respectively agree to take the number of shares in the capital of the company set out opposite their respective names.

(2.) Each subscriber to the memorandum shall, if the company is to have a share capital, in his own handwriting state in words the number of shares (being not less than one) that he agrees to take and, whether or not the company is to have a share capital, shall sign the memorandum in the presence of at least one witness (not being another subscriber) who shall attest the signature and add his address.

(3.) A statement in the memorandum of a company limited by shares that the liability of members is limited means that the liability of the members is limited to the amount (if any) unpaid on the shares respectively held by them.

Division 2.—Powers.

Powers.
Vic. s. 15.
S.A. s. 35.
W.A. s. 35.
Tas. s. 15.

19. The powers of a company include—

(*a*) power to make donations for patriotic or for charitable purposes;

(*b*) power to transact any lawful business in aid of the Commonwealth in the prosecution of any war in which the Commonwealth is engaged; and

(c) unless expressly excluded or modified by the memorandum or articles, the powers set out in the Third Schedule.

Ultra vires transactions.

20.—(1.) No act of a company (including the entering into of an agreement by the company), and no conveyance or transfer of property, whether real or personal, to or by a company, is invalid by reason only of the fact that the company was without capacity or power to do such act or to execute or take such conveyance or transfer.

(2.) Any such lack of capacity or power may be asserted or relied on only in—

(*a*) proceedings against the company by any member of the company or, where the company has issued debentures secured by a floating charge over all or any of the company's property, by the holder

of any of those debentures or the trustees for the holders of those debentures to restrain the doing of any act or acts or the conveyance or transfer of any property to or by the company;

(*b*) proceedings by the company, or by any member of the company, against the present or former officers of the company; or

(*c*) a petition by the Attorney-General to wind up the company.

(3.) If the unauthorized act, conveyance or transfer sought to be restrained in any proceedings under paragraph (*a*) of the last preceding sub-section is being, or is to be, performed or made pursuant to any contract to which the company is a party, the Court may, if all the parties to the contract are parties to the proceedings and if the Court deems it to be just and equitable, set aside and restrain the performance of the contract and may allow to the company or to the other parties to the contract (as the case requires) compensation for the loss or damage sustained by either of them which may result from the action of the Court in setting aside and restraining the performance of the contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the Court as a loss or damage sustained.

General provisions as to alteration of memorandum.

N.S.W. s. 14. Vic. s. 16. Qld. s. 16. S.A. ss. 16, 17. W.A. s. 17. Tas. s. 16.

21.—(1.) The memorandum of a company may be altered to the extent and in the manner provided by this Ordinance but not otherwise.

(2.) In addition to observing, and subject to, any other provision of this Ordinance requiring the lodging with the Registrar of any resolution of a company or order of the Court, or other document, affecting the memorandum of a company, the company shall, within fourteen days after the passing of any such resolution, the making of any such order or the execution of any such document, lodge with the Registrar notice thereof in the prescribed form and a copy of such resolution, an office copy of such order or a copy of such document, as the case may be, together with (unless the Registrar dispenses therewith) a printed copy of the memorandum as altered, and, if default is made in complying with this sub-section, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Default penalty: Ten pounds.

(3.) The Registrar shall register every resolution, order or other document lodged with him under this Ordinance that affects the memorandum of a company and shall certify by a

certificate in the prescribed form the registration of every such order, and, on such registration and not before, the alteration of the memorandum shall take effect.

(4.) The certificate of the Registrar is conclusive evidence that all the requirements of this Ordinance with respect to the alteration and any confirmation thereof have been complied with.

(5.) Notice of the registration shall be published in such manner (if any) as the Court or the Registrar directs.

(6.) The Registrar shall, where appropriate, issue a certificate of incorporation in the prescribed form and in accordance with the alteration made to the memorandum.

Names of companies.
U.K. s. 17.
N.S.W. ss. 10, 11, 32, 37, 44.
Vic. s. 17.
Qld. s. 29.
S.A. s. 27.
W.A. s. 28.
Tas. s. 17.

22.—(1.) Except with the consent of the Attorney-General, a company shall not be registered by a name that is, in the opinion of the Registrar, undesirable or is a name, or a name of a kind, that the Attorney-General has directed the Registrar not to accept for registration.

(2.) The Attorney-General shall cause a direction given by him under the last preceding sub-section to be published in the *Gazette* and a copy of the direction to be forwarded to the Attorney-General of each State.

(3.) A limited company shall have the word "Limited" or the abbreviation "Ltd." as part of and at the end of its name.

(4.) A no liability company shall have the words "No Liability" or the abbreviation "N.L." as part of and at the end of its name.

(5.) A proprietary company shall have the word "Proprietary" or the abbreviation "Pty." as part of its name, inserted immediately before the word "Limited" or before the abbreviation "Ltd." or, in the case of an unlimited company, at the end of its name.

(6.) A description of a company shall not be deemed to be inadequate or incorrect by reason of the use of—

(*a*) the abbreviation "Co." or "Coy." in lieu of the word "Company" contained in the name of the company;

(*b*) the abbreviation "Pty." in lieu of the word "Proprietary" contained in the name of the company;

(*c*) the abbreviation "Ltd." in lieu of the word "Limited" contained in the name of the company;

(*d*) the symbol "&" in lieu of the word "and" contained in the name of the company;

(*e*) the abbreviation "N.L." in lieu of the words "No Liability" contained in the name of the company; or

(*f*) any of such words in lieu of the corresponding abbreviation or symbol contained in the name of the company.

(7.) A person may apply in the prescribed form to the Registrar for the reservation of a name set out in the application as—

(*a*) the name of an intended company;

(*b*) the name to which a company proposes to change its name; or

(*c*) the name under which a foreign company proposes to be registered, either originally or on change of name.

(8.) If the Registrar is satisfied as to the *bona fides* of the application and that the proposed name is a name by which the intended company, company or foreign company could be registered without contravention of sub-section (1.) of this section, he shall reserve the proposed name for a period of two months from the date of lodging of the application.

(9.) If, at any time during a period for which a name is reserved, application is made to the Registrar for an extension of that period and the Registrar is satisfied as to the *bona fides* of the application, he may extend that period for a further period of two months.

(10.) During a period for which a name is reserved, no company, foreign company, person, firm or society (other than the intended company, company or foreign company in respect of which the name is reserved) shall be registered under this Ordinance or under any other Ordinance, whether originally or on change of name, under the reserved name or under any other name that, in the opinion of the Registrar, so closely resembles the reserved name as to be likely to be mistaken for that name.

(11.) The reservation of a name under this section in respect of an intended company, company or foreign company does not in itself entitle the intended company, company or foreign company to be registered by that name, either originally or on change of name.

Change of name.
U.K. s. 18.
N.S.W. s. 35.
Vic. s. 18.
Qld. s. 31.
S.A. s. 29.
W.A. s. 30.
Tas. s. 18.

23.—(1.) A company may, by special resolution and with the approval of the Registrar, change its name to a name by which the company could be registered without contravention of sub-section (1.) of section twenty-two of this Ordinance.

(2.) If the name of a company is (whether through inadvertance or otherwise and whether originally or by change of name) a name by which the company could not be registered

without contravention of sub-section (1.) of section twenty-two of this Ordinance, the company may by special resolution change its name to a name by which the company could be registered without contravention of that sub-section and, if the Registrar so directs, shall so change it within six weeks after the date of the direction or such longer period as the Registrar allows unless the Attorney-General by written notice annuls such direction, and, if the company fails to comply with the direction, it is guilty of an offence against this Ordinance.

Default penalty: Ten pounds.

(3.) Where the name of a company incorporated pursuant to a previous law of the Territory corresponding with this Ordinance has not been changed since the commencement of this Ordinance, the Registrar shall not, except with the approval of the Attorney-General, exercise his power under the last preceding sub-section to direct the company to change its name.

(4.) A change of name pursuant to this Ordinance does not affect the identity of the company or any rights or obligations of the company or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name.

Omission of "Limited" in name of charitable and other companies.
U.K. s. 19.
N.S.W. s. 34.
Vic. s. 19.
Qld. s. 30.
S.A. s. 28.
W.A. s. 29.
Tas. s. 19.

24.—(1.) Where it is proved to the satisfaction of the Attorney-General that a proposed limited company—

(*a*) is being formed for the purpose of providing recreation or amusement or promoting commerce, industry, art, science, religion, charity, pension or superannuation schemes or any other object useful to the community;

(*b*) will apply its profits (if any) or other income in promoting its objects; and

(*c*) will prohibit the payment of any dividend to its members,

the Attorney-General may (after requiring, if he thinks fit, the proposal to be advertised in such manner as he directs either generally or in a particular case) by licence direct that it be registered as a company with limited liability without the addition of the word "Limited" to its name, and the company may be registered accordingly.

(2.) Where it is proved to the satisfaction of the Attorney-General—

(*a*) that the objects of a limited company are restricted to those specified in the last preceding sub-section and to objects incidental or conducive thereto; and

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

the Attorney-General may by licence authorize the company to change its name to a name that does not contain the word "Limited", being a name approved by the Registrar.

(3.) A licence under this section may be issued on such conditions as the Attorney-General thinks fit, and those conditions shall be binding on the company and shall, if the Attorney-General so directs, be inserted in the memorandum or articles of the company and the memorandum or articles may, by special resolution, be altered to give effect to any such direction.

(4.) A company is, while a licence issued under this section or under any corresponding previous law of the Territory is in force, exempted from complying with the provisions of this Ordinance relating to the use of the word "Limited" as any part of its name and, except where the Attorney-General otherwise directs, the lodging of annual returns and of returns of particulars of directors, managers and secretaries and the publication of accounts.

(5.) A licence issued under this section or under any corresponding previous law of the Territory may at any time be revoked by the Attorney-General and, upon revocation, the Registrar shall enter the word "Limited" at the end of the name of the company upon the register, and the company shall thereupon cease to enjoy the exemptions and privileges granted by reason of the licence by this Ordinance but, before a licence is so revoked, the Attorney-General shall give to the company notice in writing of his intention and shall afford it an opportunity to be heard.

Registration of unlimited company as limited, &c.
U.K. s. 16.
N.S.W. s. 31.
Vic. s. 20.
Qld. s. 28.
S.A. s. 26.
W.A. s. 27.
Tas. s. 20.

25.—(1.) Subject to this section, an unlimited company may convert to a limited company, or a company limited by guarantee may convert to a company limited both by shares and guarantee, by passing a special resolution determining so to convert and lodging with the Registrar for registration a copy of the resolution.

(2.) On the lodging of the copy of the resolution, the Registrar shall, subject to this Ordinance—

(*a*) register the copy;

(*b*) make such endorsements in or alterations to his registers as are necessary to record the effect of the resolution with respect to the conversion; and

(*c*) issue to the company a certificate of incorporation of the company altered to meet the circumstances of the case and cancel the previous certificate of incorporation of the company.

(3.) On issuing the certificate of incorporation, the Registrar may, by notice in writing served on the company, dispense with the lodging by the company of any document that had been lodged with him on the occasion of or subsequent to the incorporation of the company.

(4.) The conversion takes effect on the issue of the certificate of incorporation under sub-section (2.) of this section.

(5.) A conversion of a company pursuant to this section does not affect the identity of the company or any rights or obligations of the company or render defective any legal proceedings by or against the company, and any legal proceedings that could have been continued or commenced by or against it prior to the conversion may, notwithstanding the conversion, be continued or commenced by or against it after the conversion.

Change from public to proprietary company and *vice versa*.
N.S.W. s. 37.
Vic. s. 21.
Qld. ss. 38–39.
S.A. s. 37.
W.A. s. 37.
Tas. s. 21.

26.—(1.) A public company having a share capital (other than a no liability company) may convert to a proprietary company by lodging with the Registrar a copy of a special resolution (together with notice thereof in the prescribed form)—

(*a*) determining to convert to a proprietary company and specifying an appropriate alteration to its name; and

(*b*) altering the provisions of its memorandum or articles so far as is necessary to impose the restrictions, limitations and prohibitions referred to in sub-section (1.) of section fifteen of this Ordinance.

(2.) A proprietary company may, subject to anything contained in its memorandum or articles, convert to a public company by lodging with the Registrar—

(*a*) a copy of a special resolution (together with notice thereof in the prescribed form) determining to convert to a public company and specifying an appropriate alteration to its name;

(*b*) a statement in lieu of prospectus; and

(*c*) a statutory declaration in the prescribed form verifying that paragraph (*b*) of sub-section (2.) of section fifty-two of this Ordinance has been complied with,

and thereupon the restrictions, limitations and prohibitions of the kind referred to in sub-section (1.) of section fifteen of this Ordinance as included in the memorandum or articles of the company shall cease to form part of the memorandum or articles.

(3.) On compliance by a company with the provisions of sub-section (1.) or (2.) of this section, the Registrar shall issue, in the prescribed form, a certificate of incorporation of the company altered accordingly and, on the issue of the certificate, the company shall be a proprietary company or a public company (as the case requires).

(4.) A conversion of a company pursuant to sub-section (1.) or (2.) of this section does not affect the identity of the company or any rights or obligations of the company or render defective any legal proceedings by or against the company, and any legal proceedings that could have been continued or commenced by or against it prior to the conversion may, notwithtanding any change in the company's name or capacity in consequence of the conversion, be continued or commenced by or against it after the conversion.

Default in complying with requirements as to proprietary companies.
U.K. s. 29.
N.S.W. ss. 39–40.
Vic. s. 22.
Qld. s. 39.
S.A. ss. 41, 42.
W.A. ss. 38–39.
Tas. s. 22.

27.—(1.) Where, on the application of the Attorney-General with respect to a proprietary company or of any member or creditor of a proprietary company, the Court is satisfied that default has been made in relation to the company in complying with a prohibition of a kind specified in paragraph (*c*) or (*d*) of sub-section (1.) of section fifteen of this Ordinance that is included in the memorandum or articles of the company, the Court may by order determine that, on such date as the Court specifies in its order, the company ceased to be a proprietary company.

(2.) Where—

(*a*) default has been made in relation to a proprietary company in complying with a limitation of a kind specified in paragraph (*b*) of sub-section (1.) of section fifteen of this Ordinance that is included in the memorandum or articles of the company;

(*b*) a proprietary company has been convicted of an offence under sub-section (7.) of this section;

(*c*) the memorandum or articles of a proprietary company have been so altered that they no longer include restrictions, limitations or prohibitions of the kinds specified in sub-section (1.) of section fifteen of this Ordinance; or

(*d*) a proprietary company has ceased to have a share capital,

the Registrar may, by notice served on the company, determine that, on such date as is specified in the notice, the company ceased to be a proprietary company.

(3.) Where, under this section, the Court or the Registrar determines that a company has ceased to be a proprietary company—

(*a*) the company shall be a public company, and shall be deemed to have been a public company, on and from the date specified in the order or notice;

(*b*) the company shall, on the date so specified, be deemed to have changed its name by the omission from the name of the word " Proprietary " or the abbreviation " Pty.", as the case requires; and

(*c*) the company shall, within a period of fourteen days after the date of the order or the notice, lodge with the Registrar—

(i) a statement in lieu of prospectus;

(ii) a statutory declaration in the prescribed form verifying that paragraph (*b*) of sub-section (2.) of section fifty-two of this Ordinance has been complied with; and

(iii) where an order has been made under sub-section (1.) of this section—an office copy of the order.

(4.) Where the Court is satisfied that a default or alteration referred to in sub-section (1.) or sub-section (2.) of this section has occurred but that it was accidental or due to inadvertence or to some other sufficient cause or that on other grounds it is just and equitable to grant relief, the Court may, on such terms and conditions as to the Court seem just and expedient, determine that the company has not ceased to be a proprietary company.

(5.) A company that, by virtue of a determination made under this section, has become a public company shall not convert to a proprietary company without the leave of the Court.

(6.) If default is made in complying with paragraph (*c*) of sub-section (3.) of this section, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Default penalty: Ten pounds.

(7.) Where any subscription for shares in or debentures of, or any deposit of money with, a proprietary company is arranged by or through a solicitor, broker, agent or any other person (whether an officer of the company or not) who invites the public to make use of his services in arranging investments or who holds himself out to the public as being in a position to arrange investments, the company and each person, including an officer of the company, who is a party to the arrangement is guilty of an offence against this Ordinance.

Penalty: Five hundred pounds.

(8.) Where default is made in relation to a proprietary company in complying with any restriction, limitation or prohibition of a kind specified in sub-section (1.) of section fifteen of this Ordinance that is included in the memorandum or articles of the company, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Penalty: Five hundred pounds.

Alterations of objects in memorandum.
U.K. s. 5.
N.S.W. s. 15.
Vic. s. 23.
Qld. s. 17.
S.A. s. 17.
W.A. s. 18.
Tas. s. 23.

28.—(1.) Subject to this section, a company may by special resolution alter the provisions of its memorandum with respect to the objects of the company.

(2.) Where a company proposes to alter its memorandum with respect to the objects of the company, it shall give by post twenty-one days' written notice specifying the intention to propose the resolution as a special resolution and to submit it for passing to a meeting of the company to be held on a day specified in the notice.

(3.) The notice shall be given—

(*a*) to all members of the company;

(*b*) to all trustees for debenture holders in the company; and

(*c*) if there are no trustees for a particular class of debenture holders—to all debenture holders of that class whose names are, at the time of the posting of the notice, known to the company.

(4.) The Court may, in the case of any person or class of persons, for such reasons as to it seem sufficient dispense with the notice required by sub-section (2.) of this section.

(5.) If an application for the cancellation of an alteration is made to the Court in accordance with this section by—

(*a*) the holders of not less in the aggregate than ten per centum in nominal value of the company's issued share capital or any class of that capital or, if the company is not limited by shares, not less than ten per centum of the company's members; or

(*b*) the holders of not less than ten per centum in nominal value of the company's debentures,

the alteration does not have effect except so far as it is confirmed by the Court.

(6.) The application shall be made within twenty-one days after the date on which the resolution altering the company's objects is passed and may be made on behalf of the persons entitled to make the application by such one or more of their number as they appoint in writing for the purpose.

(7.) On the application, the Court—

(*a*) shall have regard to the rights and interests of the members of the company and to each class of them as well as to the rights and interests of the creditors;

(*b*) may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase (otherwise than by the company) of the interests of dissentient members;

(*c*) may give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement; and

(*d*) may make an order cancelling the alteration or confirming the alteration either wholly or in part and on such terms and conditions as it thinks fit.

(8.) Notwithstanding any other provision of this Ordinance, a copy of a resolution altering the objects of a company shall not be lodged with the Registrar before the expiration of twenty-one days after the passing of the resolution or, if an application has been made to the Court in accordance with this section, before the application has been determined by the Court, whichever is the later.

(9.) Notice in the prescribed form of the resolution, and a copy of the resolution, shall be lodged with the Registrar by the company within fourteen days after the expiration of the twenty-one days referred to in the last preceding sub-section, but, if an application has been made to the Court in accordance with this section, the notice and copy shall be lodged with the Registrar together with an office copy of the order of the Court within fourteen days after the application has been determined by the Court.

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Articles of association.
U.K. ss. 6–7.
N.S.W. ss. 16–17, 19.
Vic. s. 24.
Qld. ss. 18–19, 21.
S.A. ss. 18, 20.
W.A. ss. 19–20.
Tas. s. 24.

29.—(1.) There may, in the case of a company limited by shares or a no liability company, and there shall, in the case of a company limited by guarantee or limited both by shares and by guarantee or an unlimited company, be registered with the memorandum, articles signed by the subscribers to the memorandum prescribing regulations for the company.

(2.) Articles shall be—

(*a*) printed;

(*b*) divided into numbered paragraphs; and

(*c*) signed by each subscriber to the memorandum in the presence of at least one witness (not being another subscriber) who shall attest the signature and add his address.

(3.) In the case of an unlimited company, the articles, if the company has a share capital, shall state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount.

(4.) In the case of an unlimited company, a company limited by guarantee or a company limited both by shares and guarantee, the articles shall state the number of members with which the company proposes to be registered.

(5.) Where a company to which the last preceding sub-section applies increases the number of its members beyond the registered number, it shall, within one month after the increase was resolved on or took place, lodge with the Registrar notice in the prescribed form of the increase.

(6.) Where a company makes default in complying with the last preceding sub-section, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Penalty: Fifty pounds.

Default penalty: Ten pounds.

Table A or B of Fourth Schedule.
U.K. s. 8.
N.S.W. ss. 18, 44.
Vic. s. 25.
Qld. s. 20.
S.A. s. 19.
W.A. ss. 19–20.
Tas. s. 25.

30.—(1.) Articles may adopt all or any of the regulations contained in Table A or, in the case of a no liability company, in Table B.

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

(3.) In the case of a no liability company incorporated after the commencement of this Ordinance, if articles are not registered, or if articles are registered then in so far as the articles do not exclude or modify the regulations contained in Table B, those regulations shall, so far as applicable, be the articles of the company in the same manner and to the same extent as if they were contained in registered articles.

Alteration of articles.
U.K. s. 10.
N.S.W. s. 20.
Vic. s. 26.
Qld. s. 22.
S.A. s. 21.
W.A. s. 22.
Tas. s. 26.

31.—(1.) Subject to this Ordinance and to any conditions in its memorandum, a company may by special resolution alter or add to its articles.

(2.) Subject to this Ordinance, an alteration or addition so made in the articles is, on and from the date of the special resolution or such later date as is specified in the resolution, as valid as if originally contained in the articles and is subject in like manner to alteration by special resolution.

(3.) Subject to this section, a company has the power, and shall be deemed always to have had the power, to amend its articles by the adoption of all or any of the regulations contained in Table A, or, in the case of a no liability company, contained in Table B, by reference only to the regulations in the Table, or to the numbers of particular regulations contained in the Table, without being required in the special resolution effecting the amendment to set out the text of the regulations so adopted.

Memorandum and articles of companies limited by guarantee.
U.K. s. 21.
N.S.W. s. 23.
Qld. s. 33.
Vic. s. 27.
S.A. s. 31.
Tas. s. 27.

32.—(1.) In the case of a company limited by guarantee and not having a share capital and registered on or after the first day of October, One thousand nine hundred and fifty-four, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member is void.

(2.) For the purposes of the provisions of this Ordinance relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles or in any resolution of a company limited by guarantee, and registered on or after the date referred to in the last preceding sub-section, purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

Effect of memorandum and articles.
U.K. ss. 20, 22.
N.S.W. ss. 22, 24.
Vic. s. 28.
Qld. ss. 32, 34.
S.A. ss. 30, 32.
W.A. ss. 31–32
Tas. s. 28.

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

(2.) Subject to the provisions of this Ordinance relating to no liability companies, any money payable by a member of a company to the company under the memorandum or articles of the company is a debt due from him to the company and is of the nature of a specialty debt.

(3.) Notwithstanding anything in the memorandum or articles of a company, no member of the company, unless either before or after the alteration is made he agrees in writing to be bound thereby, is bound by an alteration made in the memorandum or articles after the date on which he became a member so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made or in any way increases his liability as at that date to contribute to the share capital of or otherwise to pay money to the company.

Copies of memorandum and articles.
U.K. ss. 24-25.
N.S.W. ss. 25-26.
Vic. s. 29.
Qld. ss. 35-36.
S.A. ss. 33-34.
W.A. ss. 33-34.
Tas. s. 29.

34.—(1.) A company shall, on being so required by any member of the company, send to him a copy of the memorandum and of the articles (if any) of the company, subject to payment of One pound or the cost thereof, whichever is the less.

(2.) Where an alteration is made in the memorandum or articles of a company, a copy of the memorandum or articles shall not be issued by the company after the date of alteration unless—

(*a*) the copy is in accordance with the alteration; or

(*b*) a printed copy of the order or resolution making the alteration is annexed to the copy of the memorandum or articles and the particular clauses or articles affected are indicated in ink.

(3.) Where an agreement required to be lodged with the Registrar under section one hundred and forty-six of this Ordinance affects the memorandum or articles of a company, a copy of the memorandum or articles shall not be issued by the company after the agreement is entered into unless a copy of the agreement is annexed to the copy of the memorandum or articles.

(4.) If default is made in complying with this section, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Penalty: Ten pounds.

Form of contracts, authentication of documents, execution of deeds, &c.
U.K. ss. 32–36.
N.S.W. ss. 348, 351–352.
Vic. s. 30.
Qld. ss. 41, 43–45.
S.A. ss. 44–48.
W.A. ss. 41–45.
Tas. s. 111.

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

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

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

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

and any contract so made is effectual in law and binds the company and its successors and all other parties thereto and may be varied or discharged in the manner in which it is authorized to be made.

(2.) A document or proceeding requiring authentication by a company may be signed by an authorized officer of the company and need not be under its common seal.

(3.) A company may, by writing under its common seal, empower a person, either generally or in respect of a specified matter, as its agent or attorney to execute deeds on its behalf and a deed signed by such an agent or attorney on behalf of the company and under his seal, or, subject to sub-section (5.) of this section, under the appropriate official seal of the company, binds the company and has the same effect as if it were under its common seal.

(4.) The authority of such an agent or attorney, as between the company and a person dealing with him, continues during the period (if any) mentioned in the instrument conferring the authority or, if no period is so mentioned, until notice of the revocation or determination of his authority has been given to the person dealing with him.

(5.) A company whose objects require or comprise the transaction of business outside the Territory may, if authorized by its articles, have for use in any place outside the Territory an official seal, which shall be a facsimile of the common seal of the company with the addition on its face of the name of every place where it is to be used, and the person affixing any such official seal shall, in writing under his hand, certify on the instrument to which it is affixed the date on which and the place at which it is affixed.

Prohibition against carrying on business with fewer than statutory minimum numbers of members.
U.K. s. 31.
N.S.W. s. 347.
Vic. s. 31.
Qld. s. 40.
S.A. s. 43.
W.A. s. 40.
Tas. s. 30.

36. If—

(*a*) at any time the number of members of a company is reduced—

(i) in the case of a proprietary company (other than a proprietary company the whole of the issued shares of which are held by a holding company that is a public company under this Ordinance or under the law of a State or of another Territory of the Commonwealth)—below two; or

(ii) in the case of any other company—below five; and

(*b*) it carries on business for more than six months while the number is so reduced,

every person who is a member of the company during the time that it so carries on business after those six months and is cognizant of the fact that it is carrying on business with fewer than two or five members (as the case may be) is severally liable for the payment of the whole debts of the company contracted during the time that it so carries on business after those six months and may be severally sued therefor, and the company and each such member is guilty of an offence against this Ordinance if the company so carries on business after those six months.

Default penalty: Ten pounds.

PART IV.—SHARES, DEBENTURES AND CHARGES.

Division 1.—Prospectuses.

Form of application for shares or debentures to be issued with a prospectus.
U.K. s. 38 (3), (5).
N.S.W. s. 137
Vic. s. 32.
Qld. ss. 46–47.
S.A. s. 50.
W.A. s. 47.
Tas. s. 31.

37.—(1.) A person shall not issue, circulate or distribute a form of application for shares in or debentures of a corporation unless the form is issued, circulated or distributed together with a prospectus a copy of which has been registered by the Registrar.

Penalty: One thousand pounds.

(2.) The last preceding sub-section does not apply if the form of application is issued, circulated or distributed in connexion with shares or debentures that are not offered to the public, but otherwise that sub-section applies to a form of application referred to in that sub-section whether issued, circulated or distributed on or with reference to the formation of a corporation or subsequently.

Invitations to the public to deposit money with companies.
N.S.W. s. 137A.
Vic. s. 36.
Qld. s. 47A.
Tas. s. 35.

38.—(1.) An invitation to the public to deposit money with or to lend money to a corporation shall not be made unless a debenture is intended to be issued in respect of every deposit or loan so made, and a debenture shall as soon as practicable be issued in respect of every deposit or loan so made.

(2.) Where an invitation is made to the public to deposit money with or lend money to a corporation and such deposit or loan is not to be secured by a charge over all or any of the corporation's assets, the invitation shall legibly and prominently state that the document to be issued acknowledging the deposit or loan of money made pursuant to the invitation is to be an unsecured note or an unsecured deposit note, as the case may be, and shall not state that such document is to be a debenture.

(3.) Where a document is issued by a corporation (being one of a series of such documents) which either expressly or by implication acknowledges the indebtedness of the corporation in respect of money borrowed by it and the debt is not secured by a charge over all or any of the corporation's assets, the document shall be described as an unsecured note or as an unsecured deposit note and shall not be described as a debenture.

(4.) Nothing in this section applies to a prescribed corporation and nothing in this Ordinance requires a prospectus to be issued in connexion with an invitation to the public to deposit money with a prescribed corporation.

(5.) In the last preceding sub-section, " prescribed corporation " means—

(*a*) a banking corporation;

(*b*) a corporation that is declared by the Attorney-General by notice in the *Gazette* to be an authorized dealer in the short term money market; or

(*c*) a corporation that—

(i) is a pastoral company in respect of which an exemption granted under section eleven of the *Banking Act* 1959 is in force; or

(ii) is registered under the *Life Insurance Act* 1945-1961 or is a corporation the whole of the issued shares of which are held beneficially by a corporation so registered,

and is declared by the Attorney-General by notice in the *Gazette* to be a prescribed corporation for the purposes of this section.

(6.) The Attorney-General may, by notice in the *Gazette*, specify terms and conditions subject to which sub-section (4.) of this section has effect in relation to a corporation specified in paragraph (*c*) of the last preceding sub-section.

(7.) A corporation which contravenes this section and each officer of a corporation who is in default under this section is guilty of an offence against this Ordinance.

Penalty: One thousand pounds.

Requirements as to prospectuses.
U.K. ss. 37–38.
N.S.W. ss. 136–137.
Vic. ss. 37, 303 (1).
Qld. ss. 46–47.
S.A. s. 49.
W.A. ss. 46–47
Tas. s. 36.

39.—(1.) To comply with the requirements of this Ordinance, a prospectus—

(*a*) shall be printed in type of a size not less than the type known as eight point Times unless the Registrar, before the issuing, advertising, circulating or distributing of the prospectus in the Territory, certifies in writing that the type and size of letters are legible and satisfactory;

(*b*) shall be dated and that date shall, unless the contrary is proved, be taken as the date of issue of the prospectus;

(*c*) shall, as to one copy, be lodged with the Registrar as required by this Ordinance and shall state that a copy of the prospectus has been so lodged and shall also state immediately after such statement that the Registrar takes no responsibility as to its contents;

(*d*) shall, subject to the provisions contained in Part III. of the Fifth Schedule, state the matters specified in Part I. of that Schedule and set out the reports specified in Part II. of that Schedule;

(*e*) shall, where the persons making any report specified in Part II. of that Schedule have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in clause 31 of that Schedule, have endorsed thereon or attached thereto a statement by those persons setting out the adjustments and giving the reasons therefor;

(*f*) shall contain a statement that no shares or debentures or that no shares and debentures (as the case requires) shall be allotted on the basis of the prospectus later than six months after the date of the issue of the prospectus;

(*g*) shall, if it contains any statement made by an expert or contained in what purports to be a copy of or extract from a report, memorandum or valuation

of an expert, state the date on which the statement, report, memorandum or valuation was made and whether or not it was prepared by the expert for incorporation in the prospectus;

(*h*) shall not contain the name of any person as a trustee for holders of debentures, or as an auditor or a banker or a solicitor or a stock broker or a share broker of the corporation or proposed corporation or for or in relation to the issue or proposed issue of shares or debentures, unless that person has consented in writing before the issue of the prospectus to act in that capacity in relation to the prospectus and, in the case of a company or proposed company, a copy of the consent, verified as prescribed by statutory declaration, has been lodged with the Registrar; and

(*i*) shall, where the prospectus offers shares in or debentures of a foreign company incorporated or to be incorporated, contain particulars with respect to—

(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 or is to be effected;

(iii) an address in the Territory where such instrument, enactments or provisions, or certified copies thereof, may be inspected;

(iv) the date on which and the place where the company was or is to be incorporated; and

(v) whether the company has established a place of business in the Territory and, if so, the address of its principal office in the Territory.

(2.) Sub-paragraphs (i), (ii) and (iii) of paragraph (*i*) of the last preceding sub-section do not apply in the case of a prospectus issued more than two years after the day on which the company is entitled to commence business and, in the application to a foreign company of Part I. of the Fifth Schedule for the purposes of that sub-section, clause 2 of that Schedule has effect as if a reference to the constitution of the company were substituted for the reference to the articles.

(3.) A condition requiring or binding an applicant for shares in or debentures of a corporation 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, is void.

(4.) Where a prospectus relating to any shares in or debentures of a corporation is issued and the prospectus does not comply with the requirements of this Ordinance, each director of the corporation and other person responsible for the prospectus is guilty of an offence against this Ordinance.

Penalty: One thousand pounds.

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

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

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

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

(6.) In the event of failure to include in a prospectus a statement with respect to the matters specified in clause 17 of the Fifth Schedule, a director or other person does not incur any liability in respect of the failure unless it is proved that he had knowledge of the matters not disclosed.

(7.) Nothing in this section limits or diminishes any liability which any person may incur under any rule of law or any enactment or under this Ordinance apart from sub-section (4.) of this section.

Certain advertisements deemed to be prospectuses.

Sth. Africa No. 46 of 1952, s. 56 (3) (*c*). N.S.W. s. 138. Vic. s. 37 (4). Qld. s. 47C. Tas. s. 36 (6).

40.—(1.) Every advertisement offering, or calling attention to an offer or intended offer of, shares in or debentures of a corporation or proposed corporation to the public for subscription or purchase shall be deemed to be a prospectus (and all enactments and rules of law as to the contents of prospectuses and as to liability in respect of statements in and omissions from prospectuses or otherwise relating to prospectuses shall apply and have effect accordingly) if it contains any information or matter other than—

(*a*) the number and description of the shares or debentures concerned;

(*b*) the name and date of registration of the corporation and its paid up share capital;

(*c*) the general nature of the main business or proposed main business of the corporation;

(*d*) the names, addresses and occupations of—

(i) the directors or proposed directors;

(ii) the brokers or underwriters to the issue; and

(iii) in the case of debentures, the trustee for the debenture holders;

(*e*) the name of the Stock Exchange of which the brokers or underwriters to the issue are members; or

(*f*) particulars of the opening and closing dates of the offer and the time and place at which copies of the full prospectus and forms of application for the shares or debentures may be obtained,

or if it does not state that applications for shares or debentures will proceed only on one of the forms of application referred to in and attached to a printed copy of the prospectus.

(2.) A statement that, or to the effect that, the advertisement is not a prospectus does not affect the operation of this section.

(3.) This section applies to advertisements published or disseminated in the Territory by newspaper, broadcasting, television, cinematograph or any other means whatsoever.

(4.) Where an advertisement that is deemed to be a prospectus by virtue of sub-section (1.) of this section does not comply with the requirements of this Ordinance as to prospectuses, the person who published or disseminated the advertisement, and each officer of the corporation concerned, or other person, who knowingly authorized or permitted the publication or dissemination, is guilty of an offence against this Ordinance.

Penalty: Five hundred pounds.

(5.) For the purposes of this section, where—

(*a*) an advertisement offering or calling attention to an offer or intended offer of shares in or debentures of a corporation or proposed corporation to the public for subscription or purchase is published or disseminated;

(*b*) the person who published or disseminated the advertisement, before so doing, obtained a certificate signed by at least two directors of the corporation, or two proposed directors of the proposed corporation, that the proposed advertisement is an advertisement that will not be deemed to be a prospectus by virtue of sub-section (1.) of this section; and

(*c*) the advertisement is not patently an advertisement that is deemed to be a prospectus by virtue of that sub-section,

the corporation and the persons who signed the certificate shall be deemed to be the persons who published or disseminated the advertisement, but no other person shall be deemed to be such a person.

(6.) A person who has obtained a certificate referred to in paragraph (*b*) of the last preceding sub-section shall, when so requested by the Registrar, forthwith deliver the certificate to the Registrar.

Penalty: Five hundred pounds.

Default penalty: Ten pounds.

(7.) Nothing in this section limits or diminishes any liability which any person may incur under any rule of law or under any provision of this Ordinance apart from this section.

Over-subscriptions in debenture issues; asset backing.

41.—(1.) A corporation shall not accept or retain subscriptions to a debenture issue in excess of the amount of the issue as disclosed in the prospectus unless the corporation has specified in the prospectus—

(*a*) that it expressly reserves the right to accept or retain over-subscriptions; and

(*b*) a limit on the amount of over-subscriptions that may be accepted or retained.

(2.) Where a corporation specifies in a prospectus relating to a debenture issue that it reserves the right to accept or retain over-subscriptions—

(*a*) the corporation shall not make, authorize or permit any statement or reference as to the asset-backing for the issue to be made or contained in any prospectus relating to the issue, other than a statement or reference to the total assets and the total liabilities of the corporation; and

(*b*) the prospectus shall contain a statement or reference as to what the total assets and total liabilities of the corporation would be if over-subscriptions to the limit specified in the prospectus were accepted or retained.

Penalty: One thousand pounds.

Registration of prospectuses.

U.K. s. 41.
N.S.W. s. 136.
Vic. s. 38.
Qld. s. 46.
S.A. s. 50.
W.A. ss. 46–47.
Tas. s. 37.

42.—(1.) A prospectus shall not be issued, circulated or distributed by any person unless a copy thereof has first been registered by the Registrar.

(2.) The Registrar shall not register a copy of a prospectus unless—

(*a*) the copy, signed by every director and by every person who is named therein as a proposed director of the corporation or by his agent authorized in writing, is lodged with the Registrar on or before the date of its issue;

(*b*) the prospectus appears to comply with the requirements of this Ordinance or the Registrar is satisfied, if the corporation is a foreign company incorporated in a State or a Territory of the Commonwealth, that—

(i) the prospectus has been registered or is acceptable for registration by the Registrar of Companies in that State or Territory; and

(ii) the prospectus complies with the requirements of paragraph (*i*) of sub-section (1.) of section thirty-nine of this Ordinance; and

(*c*) there are also lodged with the Registrar copies verified as prescribed by statutory declaration of any consents required by section forty-five of this Ordinance to the issue of the prospectus and of all material contracts referred to in the prospectus or, in the case of such a contract not reduced into writing, a memorandum giving full particulars thereof verified as prescribed by statutory declaration.

(3.) If a prospectus is issued without a copy thereof having been so registered, the corporation and each person who is knowingly a party to the issue of the prospectus is guilty of an offence against this Ordinance.

Penalty: Two hundred and fifty pounds.

(4.) Every corporation shall cause a true copy of every document referred to in paragraph (*c*) of sub-section (2.) of this section to be deposited within seven days after registration of the prospectus at the registered office of the corporation in the Territory or, if it has no registered office in the Territory, at the address in the Territory specified in the prospectus for that purpose, and shall keep each such copy, for a period of at least six months after the registration of the prospectus, for the inspection of the members and creditors of the corporation without fee.

Document containing offer of shares for sale to be deemed prospectus.
U.K. s. 45.
N.S.W. s 141.
Vic. s. 39.
Qld. s. 50.
S.A. s. 54.
W.A. s. 51.
Tas. s. 38.

43.—(1.) Where a corporation allots or agrees to allot to any person any shares in or debentures of the corporation with a view to all or any of them being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the corporation, and all enactments and rules of law as to the contents of prospectuses and to liability in respect of statements and non-disclosures in prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly as if the shares or debentures had been offered to the public and as if persons accepting the offer in respect of any shares or debentures were subscribers therefor but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of statements or non-disclosures in the document or otherwise.

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

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

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

(3.) The requirements of this Division as to prospectuses have effect as though the persons making an offer to which this section relates were persons named in a prospectus as directors of a corporation.

(4.) In addition to complying with the other requirements of this Division, the document making the offer shall state—

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

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

(5.) Where an offer to which this section relates is made by a corporation or a firm, it is sufficient if the document referred to in sub-section (1.) of this section is signed on behalf of the corporation or firm by two directors of the corporation or not less than half of the members of the firm, as the case may be, and any such director or member may sign by his agent authorized in writing.

Allotment of shares and debentures where prospectus indicates application to list on Stock Exchange.

U.K. s. 51. Vic. s. 40. Tas. s. 39.

44.—(1.) Where a prospectus states or implies that application has been or will be made for permission for the shares or debentures offered thereby to be listed for quotation on the official list of any Stock Exchange, any allotment made on an application in pursuance of the prospectus is, subject to sub-section (3.) of this section, whenever made, void if—

(*a*) the permission is not applied for in the form for the time being required by the Stock Exchange before the third day on which the Stock Exchange is open after the date of issue of the prospectus; or

(*b*) the permission is not granted before the expiration of six weeks from the date of the issue of the prospectus or such longer period not exceeding twelve weeks from the date of the issue as is, within the said six weeks, notified to the applicant by or on behalf of the Stock Exchange.

(2.) Where permission has not been applied for, or has not been granted as aforesaid, the corporation shall, subject to sub-section (3.) of this section, forthwith repay without interest all money received from applicants in pursuance of the prospectus, and, if any such money is not repaid within fourteen days after the corporation so becomes liable to repay it, then, in addition to the liability of the corporation, the directors of the corporation are jointly and severally liable to repay that money with interest at the rate of five per centum per annum from the expiration of such fourteen days.

(3.) Where, in relation to any shares or debentures—

(*a*) permission is not applied for as specified in paragraph (*a*) of sub-section (1.) of this section; or

(*b*) permission is not granted as specified in paragraph (*b*) of that sub-section—

the Attorney-General may, by notice published in the *Gazette*, on the application of the corporation made before any share or debenture is purported to be allotted, exempt the allotment of the shares or debentures from the operation of this section.

(4.) A director is not liable under sub-section (2.) of this section if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(5.) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to do so, is void.

(6.) Without limiting the application of any of its provisions, this section has effect—

(*a*) in relation to any shares or debentures agreed to be taken by a person underwriting an offer thereof

contained in a prospectus—as if he had applied therefor in pursuance of the prospectus; and

(*b*) in relation to a prospectus offering shares for sale as if—

(i) a reference to sale were substituted for a reference to allotment;

(ii) the persons by whom the offer is made, and not the corporation, were liable under sub-section (2.) of this section to repay money received from applicants, and references to the corporation's liability under that sub-section were construed accordingly; and

(iii) for the reference in the next succeeding sub-section to the corporation and every officer of the corporation who is in default there were substituted a reference to any person by or through whom the offer is made and who knowingly and wilfully authorizes or permits the default.

(7.) All money received as aforesaid shall be kept in a separate bank account so long as the corporation may become liable to repay it under sub-section (2.) of this section, and, if default is made in complying with this sub-section, the corporation and each officer of the corporation who is in default is guilty of an offence against this Ordinance.

Penalty: Five hundred pounds.

(8.) Where the Stock Exchange has, within the period of six weeks referred to in paragraph (*b*) of sub-section (1.) of this section or, where a longer period is applicable under that paragraph, within that longer period, granted permission subject to compliance with any requirements specified by the Stock Exchange, permission shall be deemed to have been granted by the Stock Exchange if the directors have given to the Stock Exchange an undertaking in writing to comply with the requirements of the Stock Exchange, but, if any such undertaking is not complied with, each director who is in default is guilty of an offence against this Ordinance.

Penalty: Five hundred pounds or imprisonment for three months.

(9.) A person shall not issue a prospectus inviting persons to subscribe for shares in or debentures of a corporation if it includes—

(*a*) an untrue statement that permission has been granted for those shares or debentures to be dealt in or quoted or listed on any Stock Exchange; or

(*b*) any statement in any way referring to any such permission or to any application or intended application for any such permission, or to dealing in or quoting or listing the shares or debentures on any Stock Exchange, or to any requirements of a Stock Exchange, unless that statement is or is to the effect that permission has been granted or that application has been or will be made to the Stock Exchange within three days of the issue of the prospectus.

Penalty: Five hundred pounds or imprisonment for six months.

(10.) Where a prospectus contains a statement to the effect that the memorandum and articles of the corporation comply, or have been drawn so as to comply, with the requirements of any Stock Exchange, the prospectus shall, unless the contrary intention appears from the prospectus, be deemed for the purposes of this section to imply that application has been, or will be, made for permission for the shares or debentures offered by the prospectus to be listed for quotation on the official list of the Stock Exchange.

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

U.K. s. 40. Vic. s. 41. Tas. s. 40.

45.—(1.) A prospectus inviting subscription for, or purchase of, shares in or debentures of a corporation and including a statement purporting to be made by an expert, or to be based on a statement made by an expert, shall not be issued unless—

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

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

(2.) If a prospectus is issued in contravention of this section, the corporation and each person who is knowingly a party to the issue thereof is guilty of an offence against this Ordinance.

Penalty: Five hundred pounds.

Civil liability for mis-statements in prospectus.

U.K. s. 43. N.S.W. s. 140. Vic. s. 42. Qld. s. 49. S.A. s. 53. W.A. s. 50. Tas. s. 41.

46.—(1.) Subject to this section, each of the following persons is liable to pay compensation to all persons who subscribe for or purchase any shares or debentures on the faith of a prospectus for any loss or damage sustained by reason of any untrue statement therein, or by reason of the wilful non-disclosure therein of any matter of which he had knowledge and which he knew to be material, that is to say, every person who—

(*a*) is a director of the corporation at the time of the issue of the prospectus;

(*b*) authorized or caused himself to be named, and is named, in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;
(*c*) is a promoter of the corporation; or
(*d*) authorized or caused the issue of the prospectus.

(2.) Notwithstanding anything contained in the last preceding sub-section, where the consent of an expert is required to the issue of a prospectus and he has given that consent, he is not, by reason only thereof, liable as a person who has authorized or caused the issue of the prospectus except in respect of an untrue statement purporting to be made by him as an expert, and the inclusion in the prospectus of a name of a person as a trustee for debenture holders, auditor, banker, solicitor or stock or share broker shall not for that reason alone be construed as an authorization by such person of the issue of the prospectus.

(3.) A person is not liable under sub-section (1.) of this section if he proves—

(*a*) that, having consented to become a director of the corporation, he withdrew his consent before the issue of the prospectus and that it was issued without his authority or consent;
(*b*) that the prospectus was issued without his knowledge or consent and he gave reasonable public notice thereof forthwith after he came aware of its issue;
(*c*) that, after the issue of the prospectus and before allotment or sale thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent and gave reasonable public notice of the withdrawal and of the reason therefor; or
(*d*) that—
(i) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official, document or statement, he had reasonable ground to believe, and did up to the time of the allotment or sale of the shares or debentures believe, that the statement was true;
(ii) as regards every untrue statement purporting to be a statement made by an expert or to be based on a statement made by an expert or contained in what purports to be a copy of or extract from a report or valuation of

an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and he had reasonable ground to believe, and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that that person had given the consent required by section forty-five of this Ordinance to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration, or, to the defendant's knowledge, before any allotment or sale thereunder; and

(iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document.

(4.) The last preceding sub-section does not apply in the case of a person liable, by reason of his having given a consent required of him by section forty-five of this Ordinance, as a person who has authorized or caused the issue of the prospectus in respect of an untrue statement purporting to have been made by him as an expert.

(5.) A person who, apart from this sub-section, would, under sub-section (1.) of this section, be liable, by reason of his having given a consent required of him by section forty-five of this Ordinance, as a person who has authorized the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert is not so liable if he proves—

(*a*) that, having given his consent under section forty-five of this Ordinance to the issue of the prospectus, he withdrew it in writing before a copy of the prospectus was lodged with the Registrar;

(*b*) that, after a copy of the prospectus was lodged with the Registrar and before allotment or sale 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 reasons therefor; or

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

(6.) Where—

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

(*b*) the consent of a person is required under section forty-five of this Ordinance 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 corporation (except any without whose knowledge or consent the prospectus was issued) and each other person who authorized or caused the issue thereof is liable to indemnify the person so named or whose consent was so required 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, or in defending himself against any action or legal proceeding brought against him in respect thereof.

Criminal liability for statement in prospectus.
U.K. s. 44.
Vic. s. 43.
Tas. s. 42.

47.—(1.) Where in a prospectus there is an untrue statement or wilful non-disclosure, any person who authorized or caused the issue of the prospectus is guilty of an offence against this Ordinance unless he proves either that the statement or non-disclosure was immaterial or that he had reasonable ground to believe and did, up to the time of the issue of the prospectus, believe the statement was true or the non-disclosure immaterial.

Penalty: One thousand pounds or imprisonment for one year, or both.

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

Division 2.—Restrictions on Allotment and Commencement of Business.

Prohibition of allotment unless minimum subscription received.
U.K. ss. 47, 49.
N.S.W. ss. 142, 144.
Vic. s. 34.
Qld. s. 51.
S.A. ss. 56, 58.
W.A. s. 53.
Tas. s. 33.

48.—(1.) An allotment shall not be made of any shares in a company offered to the public unless—

(*a*) the minimum subscription has been subscribed; and

(*b*) the sum payable on application for the shares so subscribed has been received by the company,

but, if a cheque for the sum payable has been received by the company, the sum shall be deemed not to have been received by the company until the cheque is paid by the bank on which it is drawn.

(2.) The minimum subscription shall be—

(*a*) calculated on the nominal value of each share or, where the shares are issued at a premium, on the nominal value of, and the amount of the premium payable on, each share; and

(*b*) reckoned exclusively of any amount payable otherwise than in cash.

(3.) The amount payable on application on each share offered to the public shall, except in the case of a no liability company, be not less than five per centum of the nominal amount of the share.

(4.) If the conditions referred to in paragraphs (*a*) and (*b*) of sub-section (1.) of this section have not been satisfied on the expiration of four months after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within five months after the issue of the prospectus, the directors of the company are jointly and severally liable to repay that money with interest at the rate of five per centum per annum from the expiration of the period of five months, but a director is not so liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(5.) An allotment made by a company to an applicant in contravention of the provisions of this section or of sub-section (1.) of section fifty of this Ordinance is voidable at the option of the applicant which option may be exercised by written notice served on the company within one month after the holding of the statutory meeting of the company and not later, or (in any case where the company is not required to hold a statutory meeting or where the allotment is made after the holding of the statutory meeting) within one month after the date of the allotment and not later, and the allotment is so voidable notwithstanding that the company is in course of being wound up.

(6.) A director of a company who knowingly contravenes, or permits or authorizes the contravention of, any of the provisions of this section or of sub-section (1.) of section fifty of this Ordinance is guilty of an offence against this Ordinance and, in addition to the penalty or punishment for the offence, is liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee has sustained or incurred thereby, but no proceedings for the recovery of any such compensation shall be commenced after the expiration of two years from the date of the allotment.

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

(8.) No company shall allot, and no officer or promoter of a company or a proposed company shall authorize or permit to be allotted, shares or debentures to the public on the basis of a prospectus after the expiration of six months from the issue of the prospectus.

Penalty: Five hundred pounds.

(9.) Where an allotment of shares or debentures is made on the basis of a prospectus after the expiration of six months from the issue of the prospectus, such allotment is not, by reason only of that fact, voidable or void.

Application moneys to be held in trust until allotment.
N.S.W. s. 345. Vic. s. 35. S.A. s. 55. W.A. s. 52. Tas. s. 34.

49.—(1.) All application and other moneys paid prior to allotment by any applicant on account of shares or debentures offered to the public shall, until the allotment of such shares or debentures, be held by the company or, in the case of an intended company, by the persons named in the prospectus as proposed directors and by the promoters, upon trust for the applicant, but there shall be no obligation or duty on any bank or third person with whom any such moneys have been deposited to inquire into or see to the proper application of such moneys so long as such bank or person acts in good faith.

(2.) If default is made in complying with this section, each officer of the company in default or, in the case of an intended company, each person named in the prospectus as a proposed director, and each promoter, who knowingly authorizes or permits the default is guilty of an offence against this Ordinance.

Penalty: Five hundred pounds.

50.—(1.) A public company having a share capital which does not issue a prospectus on or with reference to its formation shall not allot any of its shares or debentures unless, at least three days before the first allotment of either shares or debentures, there has been registered by the Registrar a statement in lieu of prospectus.

Restriction on allotment in certain cases.
U.K. s. 48.
N.S.W. s. 143.
Vic. s. 32.
Qld. s. 52.
S.A. s. 57.
W.A. s. 54.
Tas. s. 31.

(2.) If default is made in complying with this section, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Penalty: Five hundred pounds.

51.—(1.) The Registrar shall not register a statement in lieu of prospectus unless it appears to him to comply with the requirements of this Ordinance.

Requirements as to statements in lieu of prospectus.
U.K. s. 48.
Vic. s. 44.
Qld. s. 52.
Tas. s. 43.

(2.) To comply with the requirements of this Ordinance, a statement in lieu of prospectus lodged by or on behalf of a company—

(*a*) shall be signed by every person who is named therein as a director or a proposed director of the company or by his agent authorized in writing;

(*b*) shall, subject to the provisions contained in Part III. of the Sixth Schedule, be in the form of and state the matters specified in Part I. of that Schedule and set out the reports specified in Part II. of that Schedule; and

(*c*) shall, where the persons making any report specified in Part II. of that Schedule have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in clause 5 of that Schedule, have endorsed thereon or attached thereto a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(3.) Where, in a statement in lieu of prospectus, there is an untrue statement or wilful non-disclosure, any director who signed the statement in lieu of prospectus is guilty of an offence against this Ordinance unless he proves either that the untrue statement or non-disclosure was immaterial or that he had reasonable ground to believe and did, up to the time of the lodging for registration of the statement in lieu of prospectus, believe that the untrue statement was true or the non-disclosure immaterial.

Penalty: Five hundred pounds or imprisonment for one year, or both.

Restrictions on commencement of business without issue of prospectus or statement in lieu.
U.K. s. 109.
N.S.W. s. 77.
Vic. s. 33.
Qld. s. 106.
S.A. s. 118.
W.A. s. 102.
Tas. s. 32.

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

(*a*) if any money is or may become liable to be repaid to applicants for any shares or debentures offered for public subscription by reason of any failure to apply for or obtain permission for listing for quotation on any Stock Exchange; or

(*b*) unless—

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

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

(iii) there has been lodged with the Registrar a statutory declaration by the secretary or one of the directors of the company in the prescribed form verifying that the above conditions have been complied with.

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

(*a*) there has been lodged with the Registrar a statement in lieu of prospectus which complies with the provisions of this Ordinance;

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

(*c*) there has been lodged with the Registrar a statutory declaration by the secretary or one of the directors of the company in the prescribed form verifying that paragraph (*b*) of this sub-section has been complied with.

(3.) The Registrar shall, on the lodging of the statutory declaration in accordance with this section, certify by a certificate in the prescribed form that the company is entitled to commence business and to exercise its borrowing powers, and that certificate is conclusive evidence thereof.

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

(5.) Where shares and debentures are offered simultaneously by a company for subscription, nothing in this section shall prevent the receipt by the company of any money payable on application for the debentures.

(6.) If a company commences business or exercises borrowing powers in contravention of this section, each person who is responsible for the contravention is guilty of an offence against this Ordinance.

Penalty: Two hundred pounds.

Default penalty: Fifty pounds.

53. A company shall not, before the statutory meeting, vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus unless the variation is made subject to the approval of the statutory meeting.

Restriction on varying contracts referred to in prospectus, &c.
U.K. s. 42.
N.S.W. s. 139.
Vic. s. 45.
Qld. s. 48.
S.A. s. 52.
W.A. s. 49.
Tas. s. 44.

Division 3.—*Shares.*

54.—(1.) Where a company makes any allotment of its shares, or any of its shares are deemed to have been allotted under sub-section (6.) of this section, the company shall, within one month after the date on which the shares are allotted or deemed to have been allotted, lodge with the Registrar a return of the allotment in the prescribed form stating—

Return as to allotments.
U.K. s. 52.
N.S.W. s. 145.
Vic. s. 46.
Qld. s. 54.
S.A. s. 59.
W.A. s. 56.
Tas. s. 45.

(*a*) the number and nominal amounts of the shares comprised in the allotment;

(*b*) the amount (if any) paid, deemed to be paid or due and payable on the allotment of each share;

(*c*) where the capital of the company is divided into shares of different classes—the class of shares to which each share comprised in the allotment belongs; and

(*d*) subject to the next succeeding sub-section, the full name, or the surname and at least one Christian or other name and other initials, and the address, of each of the allottees and the number and class of shares allotted to him.

(2.) The particulars mentioned in paragraph (*d*) of the last preceding sub-section need not be included in the return—

(*a*) where the shares have been allotted for cash by a no liability company; or

(*b*) where a company to which the provisions of sub-section (1.) of section one hundred and sixty of this Ordinance apply has allotted shares—

(i) for cash; or

(ii) for a consideration other than cash and the number of persons to whom the shares have been allotted exceeds five hundred.

(3.) Where shares are allotted, or deemed to have been allotted, as fully or partly paid up otherwise than in cash and the allotment is made pursuant to a contract in writing, the company shall lodge with the return the contract evidencing the entitlement of the allottee or a copy of any such contract verified as prescribed by statutory declaration.

(4.) If a verified copy of a contract is lodged, the original contract shall, if the Registrar so requests, be produced at the same time to the Registrar.

(5.) Where shares are allotted, or are deemed to have been allotted, as fully or partly paid up otherwise than in cash and the allotment is made—

(*a*) pursuant to a contract not reduced to writing;

(*b*) pursuant to a provision in the memorandum or articles; or

(*c*) in satisfaction of a dividend declared in favour of, but not payable in cash to, the shareholders,

the company shall lodge with the return a statement in the prescribed form.

(6.) For the purposes of this section, any shares issued without formal allotment to subscribers to the memorandum shall be deemed to have been allotted to such subscribers on the date of the incorporation of the company.

(7.) If default is made in complying with this section, each officer of the company who is in default is guilty of an offence against this Ordinance.

Penalty: Two hundred pounds.

Default penalty: Fifty pounds.

Differences in calls and payments, &c.
U.K. s. 59.
N.S.W. s. 151.
Vic. s. 47.
Qld. s. 60.
S.A. s. 65.
W.A. s. 62.
Tas. s. 46.

55. A company may, if it is so authorized by its articles—

(*a*) make arrangements on the issue of shares for varying the amounts and times of payments of calls as between share holders;

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

(*c*) except in the case of a no liability company, pay dividends in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

Reserve liability.
U.K. s. 60.
N.S.W. s. 152.
Vic. s. 47.
Qld. s. 61.
S.A. s. 66.
W.A. s. 63.
Tas. s. 46.

56. A limited company may, by special resolution, determine that any portion of its share capital which has not been already called up shall not be capable of being called up except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up, but no such resolution shall prejudice the rights of any person acquired before the passing of the resolution.

Share warrants.
N.S.W. s. 80.
Vic. s. 47.
Tas. s. 46.

57.—(1.) A company shall not issue any share warrant.

(2.) A share warrant issued before the first day of October, One thousand nine hundred and fifty-four, has effect subject to section eighty of the Companies Act, as if this Ordinance had not been made.

Power to pay certain commissions, and prohibition of payment of all other commissions, discounts, &c.
U.K. s. 53.
N.S.W. s. 146.
Vic. s. 48.
Qld. s. 55.
S.A. s. 60.
W.A. s. 57.
Tas s. 47.

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

(*a*) the payment is authorized by the articles;

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

(*c*) the amount or rate of the commission is—

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

(ii) in the case of shares not so offered—disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and

lodged before the payment of the commission with the Registrar, and, where a circular or notice not being a prospectus inviting subscription for the shares is issued, also disclosed in that circular or notice; and

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

(2.) Except as provided in the last preceding sub-section, a company shall not apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money are so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money is paid out of the nominal purchase money or contract price or otherwise.

(3.) Nothing in this section affects the power of a company to pay such brokerage (in addition to or in lieu of the commission referred to in sub-section (1.) of this section) as, before the commencement of this Ordinance, it was lawful for a company to pay, but the amount or rate per centum of the brokerage paid or agreed to be paid by the company shall (in the case of shares offered to the public for subscription) be disclosed in the prospectus or (in the case of shares not offered to the public for subscription) be disclosed in the statement in lieu of prospectus or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and lodged before the payment of the brokerage with the Registrar, and, where a circular or notice not being a prospectus inviting subscription for the shares is issued, also disclosed in that circular or notice.

(4.) A vendor to, promoter of, or other person who receives payment in money or shares from, a company may apply any part of the money or shares so received in payment of any commission the payment of which, if it were made directly by the company, would be lawful under this section.

(5.) If default is made in complying with a provision of this section by reason of a failure to lodge with the Registrar a statement in the prescribed form referred to in sub-paragraph (ii) of paragraph (*c*) of sub-section (1.), or in sub-section (3.), of this section, the company and each officer of the company who is in default is liable to a default penalty of Ten pounds.

Power to issue shares at a discount.
U.K. s. 57.
N.S.W. s. 150.
Vic. s. 49.
Qld. s. 59.
S.A. s. 64.
W.A. s. 61.
Tas. s. 48.

59.—(1.) Subject to this section, a company may issue at a discount shares of a class already issued if—

(*a*) the issue of the shares at a discount is authorized by resolution passed in general meeting of the company, and is confirmed by order of the Court;

(*b*) the resolution specifies the maximum rate of discount at which the shares are to be issued;

(*c*) at the date of the issue, not less than one year has elapsed since the date on which the company was entitled to commence business; and

(*d*) the shares are issued within one month after the date on which the issue is confirmed by order of the Court or within such extended time as the Court allows.

(2.) The Court may, if having regard to all the circumstances of the case it thinks proper to do so, make an order confirming the issue on such terms and conditions as it thinks fit.

(3.) A prospectus relating to the issue of the shares shall contain particulars of the discount allowed or of so much of that discount as has not been written off at the date of the issue of the prospectus.

(4.) Notwithstanding any provision of its articles, a company shall not issue at a discount shares of any class unless it first offers the shares to every holder of shares of that class in the company proportionately to the number of those shares held by him.

(5.) Every such offer shall be made by notice specifying the number of shares to which the member is entitled and limiting a time, not being less than twenty-one days from the date of the notice, within which the offer may be accepted.

(6.) If any such offer is not accepted within the time limited by the notice, the shares may be issued on terms not more favourable than those offered to the shareholders.

(7.) If default is made in complying with this section, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Default penalty: Ten pounds.

(8.) This section does not affect the right of a no liability company to issue shares at a discount.

Issue of shares at premium.
U.K. s. 56.
Vic. s. 50.
Tas. s. 49.

60.—(1.) Where a company issues shares for which a premium is received by the company, whether in cash or in the form of other valuable consideration, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account, to be called " the share premium account ", and the provisions of this Ordinance relating to the

reduction of the share capital of a company apply, subject to this section, as if the share premium account were paid up share capital of the company.

(2.) The share premium account may be applied—

(*a*) in paying up un-issued shares to be issued to members of the company as fully paid bonus shares;

(*b*) in paying up in whole or in part the balance unpaid on shares previously issued to members of the company;

(*c*) in the payment of dividends if such dividends are satisfied by the issue of shares to members of the company;

(*d*) in writing off—

(i) the preliminary expenses of the company; or

(ii) the expenses of, or the commission or brokerage paid or discount allowed on, any issue of shares or debentures of the company;

(*e*) in providing for the premium payable on redemption of debentures or redeemable preference shares; or

(*f*) in the case of a company that carries on life insurance business in the Commonwealth—by appropriation or transfer to any statutory fund established and maintained pursuant to the provisions of the *Life Insurance Act* 1945-1961.

(3.) Where a company has, before the commencement of this Ordinance, issued any shares at a premium, the provisions of this section apply to and in relation to the premiums as if those shares had been issued after the commencement of this Ordinance but, where any part of the premiums has been so applied by the company that it does not at the commencement of this Ordinance form an identifiable part of the company's assets, it shall be disregarded in determining the sum to be transferred to the share premium account.

Redeemable preference shares.
U.K. s. 58.
N.S.W. ss. 149, 154.
Vic. s. 51.
Qld. s. 58.
S.A. s. 63.
W.A. s. 60.
Tas. s. 50.

61.—(1.) Subject to this section, a company having a share capital may, if so authorized by its articles, issue preference shares which are, or at the option of the company are to be, liable to be redeemed, but the redemption shall be effected only on such terms and in such manner as is provided by the articles.

(2.) The redemption shall not be taken as reducing the amount of authorized share capital of the company.

(3.) The shares shall not be redeemed—

(*a*) except out of profits which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption; and

(*b*) unless they are fully paid up.

(4.) The premium, if any, payable on redemption shall be provided for out of profits or the share premium account before the shares are redeemed.

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

(6.) Where, in pursuance of this section, a company has redeemed or is about to redeeem any preference shares, it may issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and the share capital of the company shall not, for the purposes of any fee payable under this Ordinance, be deemed to be increased by the issue but, where new shares are issued before the redemption of the old shares, the new shares shall not, for the purposes of any such fee, be deemed to have been issued in pursuance of this sub-section unless the old shares are redeemed within one month after the issue of the new shares.

(7.) The capital redemption reserve may be applied in paying up un-issued shares of the company to be issued to members of the company as fully paid bonus shares.

(8.) If a company redeems any redeemable preference shares, it shall, within fourteen days after so doing, give notice thereof to the Registrar in the prescribed form specifying the shares redeemed.

Power of company to alter its share capital.
U.K. ss. 61, 64.
N.S.W. ss. 153, 155.
Vic. s. 52.
Qld. ss. 62, 64–65.
S.A. ss. 67, 69–70.
W.A. ss. 64, 66.
Tas. s. 51.

62.—(1.) A company may, if it is so authorized by its articles, in general meeting alter the conditions of its memorandum in any one or more of the following ways:—

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

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

(*c*) convert all or any of its paid up shares into stock and re-convert that stock into paid up shares of any denomination;

(*d*) subdivide its shares or any of them into shares of smaller amount than is fixed by the memorandum, but so that, in the subdivision, the proportion between the amount paid and the amount (if any) unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

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

(2.) A cancellation of shares under this section shall not be deemed to be a reduction of share capital within the meaning of this Ordinance.

(3.) An unlimited company having a share capital may, by a resolution passed for the purposes of sub-section (1.) of section twenty-five of this Ordinance—

(*a*) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up; and

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

(4.) Where a company has increased its share capital beyond the registered capital, it shall, within fourteen days after the passing of the resolution authorizing the increase, lodge with the Registrar notice in the prescribed form of the increase.

(5.) If a company fails to comply with the provisions of the last preceding sub-section, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Default penalty: Ten pounds.

Validation of shares improperly issued.

63. Where a company has purported to issue or allot shares and the creation, issue or allotment of those shares is invalid by reason of any provision of this or any other Ordinance or of the memorandum or articles of the company or otherwise, or the

terms of issue or allotment are inconsistent with or unauthorized by any such provision, the Court may, upon application made by the company or by a holder or mortgagee of any of those shares or by a creditor of the company and upon being satisfied that in all the circumstances it is just and equitable so to do, make an order validating the issue or allotment of those shares or confirming the terms of issue or allotment thereof, or both, and, upon an office copy of the order being lodged with the Registrar, those shares shall be deemed to have been validly issued or allotted upon the terms of the issue or allotment thereof.

Special resolution for reduction of share capital.
U.K. ss. 66–71.
N.S.W. ss. 158–163.
Vic. s. 53.
Qld. ss. 67–70.
S.A. ss. 74–81.
W.A. s. 71.
Tas. s. 52.

64.—(1.) Subject to confirmation by the Court, a company may, if so authorized by its articles, by special resolution reduce its share capital in any way and, in particular, without limiting the generality of the foregoing, may do all or any of the following:—

(*a*) extinguish or reduce the liability of any of its shares in respect of share capital not paid up;

(*b*) cancel any paid-up capital which is lost or unrepresented by available assets;

(*c*) pay off any paid-up share capital which is in excess of the needs of the company,

and may, so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2.) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the Court so directs—

(*a*) every creditor of the company who, at the date fixed by the Court, is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company is entitled to object to the reduction;

(*b*) the Court, unless satisfied on affidavit that there are no such creditors, shall settle a list of creditors so entitled to object and, for that purpose, shall ascertain as far as possible without requiring an application from any creditor the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a final day on or before which creditors not entered on the list may claim to be so entered; and

(*c*) where a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the Court may dispense with the consent of that creditor on the company securing payment of his debt or claim by appropriating as the Court directs—

(i) if the company admits the full amount of the debt or claim or, though not admitting it, is willing to provide for it—the full amount of the debt or claim; or

(ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim or if the amount is contingent or not ascertained—an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up by the Court.

(3.) Notwithstanding the provisions of the last preceding sub-section, the Court may, having regard to any special circumstances of a case, direct that all or any of the provisions of that sub-section do not apply as regards any class of creditors.

(4.) The Court, if satisfied with respect to every creditor who under sub-section (2.) of this section is entitled to object that either his consent to the reduction has been obtained or his debt or claim has been discharged, has determined or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit and may by order—

(*a*) if for any special reason it thinks proper so to do—direct that the company shall, during such period (commencing on or at any time after the date of the order) as is specified in the order, add to its name as the last words thereof the words " and reduced "; and

(*b*) require the company to publish, in such manner as the Court directs, the reasons for reduction or such other information as the Court thinks expedient and, if the Court thinks fit, the causes which led to the reduction.

(5.) An order made under the last preceding sub-section shall show the amount of the share capital of the company as altered by the order, the number of shares into which it is to be divided and the amount of each share and the amount, if any, at the date of the order deemed to be paid up on each share.

(6.) On the lodging of an office copy of the order with the Registrar, the resolution for reducing share capital as confirmed by the order so lodged shall take effect.

(7.) A certificate of the Registrar in the prescribed form that an office copy of the order has been lodged with him is conclusive evidence that the requirements of this Ordinance with respect to reduction of share capital have been complied with and that the share capital of the company is such as is stated in the order.

(8.) On the lodging of the copy of the order, the particulars shown in the order pursuant to sub-section (5.) of this section shall be deemed to be substituted for the corresponding particulars in the memorandum and such substitution shall, and any addition ordered by the Court to be made to the name of the company shall for such period as is specified in the order of the Court, be deemed to be alterations of the memorandum for the purposes of this Ordinance.

(9.) A member, past or present, is not liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount of the share as fixed by the order and the amount paid, or the reduced amount (if any) which is to be deemed to have been paid, on the share (as the case may be), but, where any creditor entitled to object to the reduction is, by reason of his ignorance of the proceedings for reduction or of their nature and effect with respect to his claim, not entered on the list of creditors, and after the reduction the company is unable, within the meaning of the provisions of this Ordinance with respect to winding up by the Court, to pay the amount of his debt or claim—

(*a*) every person who was a member of the company at the date of the lodging of the copy of the order for reduction is liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before the said date; and

(*b*) if the company is wound up, the Court, on the application of any such creditor and proof of his ignorance of the proceedings for reduction or of their nature and effect with respect to his claim, may, if it thinks fit, settle accordingly a list of persons so liable to contribute and make and enforce calls and orders on the contributories settled on the list as if they were ordinary contributories in a winding up,

but nothing in this sub-section affects the rights of the contributories among themselves.

(10.) An officer of the company who—

(*a*) wilfully conceals the name of any creditor entitled to object to the reduction; or

(*b*) wilfully misrepresents the nature or amount of the debt or claim of any creditor,

is guilty of an offence against this Ordinance punishable on indictment.

Penalty: Imprisonment for three years.

(11.) This section does not apply to an unlimited company, but nothing in this Ordinance precludes an unlimited company from reducing in any way its share capital, including any amount in its share premium account.

Rights of holders of classes of shares.
U.K. s. 72.
N.S.W. s. 164.
Vic. s. 54.
Qld. s. 73.
S.A. s. 82.
W.A. s. 78.
Tas. s. 53.

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

(*a*) provision is made by the memorandum or articles for authorizing the variation or abrogation of the rights attached to any class of shares in the company subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares; and

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

the holders of not less in the aggregate than ten per centum of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation or abrogation, may apply to the Court to have the variation or abrogation cancelled, and, if any such application is made, the variation or abrogation shall not have effect until confirmed by the Court.

(2.) An application is not invalid by reason of the applicants or any of them having consented to or voted in favour of the resolution for the variation or abrogation if the Court is satisfied that any material fact was not disclosed by the company to those applicants before they so consented or voted.

(3.) The application shall be made within one month after the date on which the consent was given or the resolution was passed, or such further time as the Court allows, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they appoint in writing.

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

(5.) The company shall, within fourteen days after the making of an order by the Court on any such application, lodge an office copy of the order with the Registrar and, if default is made in complying with this provision, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Penalty: One hundred pounds.

Default penalty: Ten pounds.

(6.) The issue by a company of preference shares ranking *pari passu* with existing preference shares issued by the company shall be deemed to be a variation of the rights attached to those existing preference shares unless the issue of the first-mentioned shares was authorized by the terms of issue of the existing preference shares or by the articles of the company in force at the time the existing preference shares were issued.

Rights of holders of preference shares to be set out in memorandum or articles. Vic. s. 55. Tas. s. 54.

66.—(1.) A company shall not allot any preference shares or convert any issued shares into preference shares unless there is set out in its memorandum or articles the rights of the holders of those shares with respect to repayment of capital, participation in surplus assets and profits, cumulative or non-cumulative dividends, voting, and priority of payment of capital and dividend in relation to other shares or other classes of preference shares.

(2.) If default is made in complying with this section, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Penalty: One hundred pounds.

Dealing by a company in its own shares, &c. U.K. s. 54. N.S.W. s. 148. Vic. s. 56. Qld. s. 57. S.A. s. 62. W.A. s. 154. Tas. s. 55.

67.—(1.) Except as is otherwise expressly provided by this Ordinance, no company shall give, whether directly or indirectly and whether by means of a loan, guarantee or the provision of security or otherwise, any financial assistance for the purpose of or in connexion with a purchase or subscription made or to be made by any person of or for any shares in the company or, where the company is a subsidiary, in its holding company, or (except in the case of borrowing shares of a building society) in any way purchase, deal in or lend money on its own shares.

(2.) Nothing in the last preceding sub-section prohibits—

(*a*) where the lending of money is part of the ordinary business of a company—the lending of money by the company in the ordinary course of its business;

(*b*) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of or subscription for fully-paid shares in the company or its holding company, being a purchase or subscription by trustees of or for shares to be held by or for the benefit of employees of the company, including any director holding a salaried employment or office in the company; or

(*c*) the making by a company of loans to persons, other than directors, *bona fide* in the employment of the company or of a subsidiary of the company with a view to enabling those persons to purchase fully-paid shares in the company to be held by themselves by way of beneficial ownership.

(3.) If there is any contravention of this section, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Penalty: Five hundred pounds or imprisonment for three months.

Options over unissued shares.

68.—(1.) An option granted by a public company after the commencement of this Ordinance which enables any person to take up unissued shares of the company after a period of five years has elapsed from the date on which the option was granted is void.

(2.) The last preceding sub-section does not apply in any case where the holders of debentures have an option to take up shares of the company by way of redemption of the debentures.

Power of company to pay interest out of capital in certain cases.
U.K. s. 65.
N.S.W. s. 157.
Vic. s. 57.
Qld. s. 66.
S.A. s. 71.
W.A. s. 68.
Tas. s. 56.

69. Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a long period, the company may pay interest on so much of such share capital as is for the time being paid up and charge the interest so paid to capital as part of the cost of the construction or provision, but—

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

(*b*) before approving of any such payment, the Court may, at the expense of the company, appoint a person to inquire and report as to the circumstances of the case and may require the company to give security for the payment of the costs of the inquiry;

(*c*) the payment shall be made only for such period as is determined by the Court, but that period shall in no case extend beyond a period of twelve months after the works or buildings have been actually completed or the plant provided;

(*d*) the rate of interest shall in no case exceed five per centum per annum or such other rate as is for the time being prescribed; and

(*e*) the payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid.

Division 4.—Debentures.

Register of debenture holders and copies of trust deed.
U.K. s. 87.
N.S.W. s. 169.
Vic. s. 58.
Qld. s. 97.
S.A. s. 94.
W.A. s. 90.
Tas. s. 57.

70.—(1.) A company which issues debentures shall keep a register of holders of the debentures at the registered office of the company or at some other place in the Territory.

(2.) A company shall, within seven days after the register is first kept at a place other than the registered office, lodge with the Registrar notice in the prescribed form of the place where the register is kept and shall, within seven days after any change in the place at which the register is kept, lodge with the Registrar notice in the prescribed form of the change.

(3.) The register shall, except when duly closed, be open to the inspection of the registered holder of any debentures and of any holder of shares in the company and shall contain particulars of the names and addresses of the debenture holders and the amount of debentures held by them.

(4.) For the purposes of this section, a register shall be deemed to be duly closed if closed in accordance with provisions contained in the articles or in the debentures or debenture stock certificates, or in the trust deed or other document relating to or securing the debentures, during such periods (not exceeding in the aggregate thirty days in any calendar year) as is therein specified.

(5.) A company shall, at the request of a registered holder of debentures or a holder of shares in the company, supply to him a copy of the register of the holders of debentures of the company or any part thereof on payment of Two shillings for every hundred words or part thereof required to be copied, but the copy need not include any particulars as to any debenture holder other than his name and address and the debentures held by him.

(6.) A copy of any trust deed relating to or securing any issue of debentures shall be forwarded by the company to a holder of those debentures at his request on payment of the sum of Ten shillings or such lesser sum as is fixed by the company, or, where the copy has to be specially made to meet the request, on payment of Two shillings for every hundred words or part thereof required to be copied.

(7.) If inspection is refused, or a copy is refused or not forwarded within a reasonable time (not exceeding in any case thirty days) after a request has been made pursuant to this section, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Default penalty: Ten pounds.

(8.) Where, on the date of commencement of this Ordinance, a register of holders of debentures is being kept by a company at a place other than the registered office of the company, that register shall, for the purposes of sub-section (2.) of this section, be deemed to have been first kept at that place on that date.

Specific performance of contracts.
U.K. s. 92.
N.S.W. s. 172.
Vic. s. 59.
Qld. s. 100.
S.A. s. 97.
W.A s. 93.
Tas. s. 58.

71. A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

Perpetual debentures.
U.K. s. 89.
N.S.W. s. 170.
Vic. s. 60.
Qld. s. 98.
S.A. s. 95.
W.A. s. 91.
Tas. s. 59.

72. A condition contained in any debenture or in any deed for securing any debentures, whether the debenture or deed is issued or made before or after the commencement of this Ordinance, is not invalid by reason only that the debentures are thereby made irredeemable or redeemable only on the happening of a contingency however remote or on the expiration of a period however long, any rule of law or equity to the contrary notwithstanding.

Re-issue of redeemed debentures.
U.K. s. 90.
N.S.W. s. 171.
Vic. s. 61.
Qld. s. 99.
S.A. s. 96.
W.A. s. 92.
Tas. s. 60.

73.—(1.) Where a company has redeemed any debentures, whether before or after the commencement of this Ordinance—

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

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

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

re-issue of a debenture or the issue of one debenture in place of another under this sub-section, whether the re-issue or issue was made before or after the commencement of this Ordinance shall not be regarded as the issue of a new debenture for the purpose of any provision limiting the amount or number of debentures that may be issued by the company.

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

(3.) Where a company has, either before or after the commencement of this Ordinance, deposited any of its debentures to secure advances 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 while the debentures remain so deposited.

Trustee for debenture holders.
N.S.W. s. 172A. Vic. s. 62. Qld. s. 100A. Tas. s. 61.

74.—(1.) A corporation offering debentures to the public for subscription in the Territory shall (except where a debenture is given by one instrument to not more than twenty-five persons without any right to subdivide their interests) make provision in the debentures or in a trust deed for the appointment of—

(*a*) a company that is not an exempt proprietary company; or

(*b*) a foreign company incorporated in a State or Territory of the Commonwealth, not being an exempt proprietary company under the law of the State or Territory in which it is incorporated,

as trustee for the holders of the debentures.

(2.) A corporation shall not allot any debenture until the appointment provided for in the debentures or in the trust deed pursuant to the last preceding sub-section has been made.

(3.) The debentures or deed shall contain covenants by the corporation, or, if it does not expressly contain those covenants, shall be deemed to contain covenants, to the following effect:—

(*a*) that the corporation will use its best endeavours to carry on and conduct its business in a proper and efficient manner;

(*b*) that, to the same extent as if the trustee for the holders of the debentures or any registered company auditor appointed by the trustee were a director of the corporation, it will—

(i) make available for its or his inspection the whole of the accounting or other records of the corporation; and

(ii) give to it or him such information as it or he requires with respect to all matters relating to the accounting or other records of the corporation; and

(*c*) that the corporation will, on the application of holders of debentures of any class holding not less than one-tenth in nominal value of the issued debentures of that class delivered to its registered office, by giving notice—

(i) to each of the holders of the debentures (other than debentures payable to bearer) of that class at his address as specified in the register of debentures; and

(ii) by an advertisement in a daily newspaper published in the Territory addressed to all holders of debentures of that class,

summon a meeting to consider the accounts and balance-sheet which were laid before the last preceding annual general meeting of the corporation and to give to the trustee directions in relation to the exercise of the trustee's powers, such meeting to be held at a time and place specified in the notice and advertisement under the chairmanship of a person nominated by the trustee or such other person as is appointed in that behalf by the holders of debentures present at the meeting.

(4.) Where any debenture given or trust deed made after the commencement of this Ordinance does not expressly contain the covenants referred to in the last preceding sub-section, the corporation and each officer of the corporation who is in default is guilty of an offence against this Ordinance.

Penalty: One hundred pounds.

(5.) Without leave of the Court, a company or foreign company shall not be appointed, hold office or act as trustee for the holders of debentures of a corporation referred to in sub-section (1.) of this section if that company or foreign company is—

(*a*) a director of the corporation;

(*b*) a shareholder which holds its shares in the corporation beneficially;

(*c*) a creditor of the corporation;

(*d*) a corporation that has entered into a guarantee in respect of the principal debt secured by those debentures or in respect of interest thereon; or

(*e*) a corporation that is, by virtue of sub-section (5.) of section six of this Ordinance, deemed to be related to—

(i) any company or foreign company specified in paragraphs (*a*) to (*d*), inclusive, of this sub-section; or

(ii) the corporation referred to in sub-section (1.) of this section.

(6.) Notwithstanding anything contained in the last preceding sub-section, that sub-section does not prevent a corporation (in this sub-section referred to as "the trustee corporation") that is, or is deemed by virtue of sub-section (5.) or section six of this Ordinance to be related to—

(*a*) a banking corporation;

(*b*) a corporation authorized to transact life insurance business under the *Life Insurance Act* 1945-1961; or

(*c*) a corporation authorized by the law of a State or Territory of the Commonwealth to take in its own name a grant of probate or of letters of administration of the estate of a deceased person,

from being appointed, holding office or acting as trustee for the holders of debentures of another corporation (in this sub-section referred to as "the other corporation") by reason only that—

(*d*) the other corporation owes to the trustee corporation or to a corporation that is deemed by virtue of sub-section (5.) of section six of this Ordinance to be related to the trustee corporation—

(i) moneys that (after deducting therefrom moneys referred to in either of the next two succeeding sub-paragraphs) do not exceed, at the time of the appointment or at any time within three months after the debentures are first offered to the public, one-tenth of the amount of the debentures proposed to be offered to the public within that period or, at any time after the expiration of that period, one-tenth of the amount owed by the other corporation to the holders of the debentures;

(ii) moneys that are secured by, and only by, a first mortgage over land of the other corporation or by any debentures issued by the other corporation to the public or any debentures to which the trustee corporation, or a corporation that is so deemed to be related to the trustee corporation, is not beneficially entitled; or

(iii) moneys to which the trustee corporation, or a corporation that is so deemed to be related to the trustee corporation, is entitled as trustee for holders of any debentures of the other corporation in accordance with the terms of the debentures or of the relevant trust deed; or

(*e*) the trustee corporation, or a corporation that is deemed by virtue of sub-secton (5.) of section six of this Ordinance to be related to the trustee corporation, is a shareholder of the other corporation in respect of shares that it holds beneficially if the shares in the other corporation held beneficially by it, and by all other corporations that are so deemed to be related to it, do not carry the right to exercise more than one-tenth of the voting power at any general meeting of the other corporation.

(7.) Nothing in sub-section (5.) of this section affects the operation of any debentures or trust deed issued or executed before the commencement of this Ordinance or applies to the trustee for the holders of any such debentures unless, pursuant to any such trust deed, a further offer of debentures is made to the public after the commencement of this Ordinance.

(8.) A corporation referred to in sub-section (1.) of this section shall, in writing, furnish the trustee, whether or not any demand therefor has been made, with particulars (within twenty-one days after the creation of the charge) of any charge created by the corporation, other than a charge created in the ordinary course of the business of the corporation, and, when the amount to be advanced is indeterminate, particulars (within seven days after the advance) of the amount or amounts in fact advanced, but, where any such advances are merged in a current account with bankers or trade creditors, it shall be sufficient for particulars of the net amount outstanding in respect of any such advances to be furnished every three months.

(9.) The Court may, on the application of the trustee, order a meeting of the holders of debentures of any class to be summoned to consider any matters in which they are concerned and advise the trustee thereon, and the meeting shall be held under the chairmanship of a person nominated by the trustee or such person as the meeting appoints.

(10.) The trustee shall exercise diligence in ascertaining whether or not the assets of the corporation which constitute or may constitute the security for the debentures are sufficient or are likely to become sufficient to discharge the principal debt and any interest thereon.

(11.) Notwithstanding anything in any debenture or trust deed, the security for any debentures which are irredeemable or redeemable only on the happening of a contingency or at an uncertain time shall be enforceable forthwith or at such time as the Court directs if, on the application of the trustee for debenture holders or, where there is no trustee, of a debenture holder, the Court is satisfied that—

(*a*) at the time of the issue of the debentures the assets of the corporation which constituted, or were intended to constitute, the security therefor were sufficient or likely to become sufficient to discharge the principal debt and any interest thereon;

(*b*) the security, if realized under the circumstances existing at the time of the application, would be likely to bring not more than sixty per centum of the principal sum of moneys outstanding (regard being had to all prior charges, if any); and

(*c*) the assets covered by the security, on a fair valuation on the basis of a going concern, are worth less than the principal sum and the corporation is not earning the interest payable on the principal sum or, where no definite rate of interest is payable, interest thereon at such rate as the Court considers would be a fair rate to expect from a similar investment, after allowing a reasonable amount for depreciation.

(12.) The last preceding sub-section does not affect any power to vary rights or accept any compromise or arrangement created by the terms of the debentures or under a compromise or arrangement between the corporation and creditors.

(13.) If default is made in complying with any provision of this section, other than sub-section (3.) or (4.) of this section, or with a covenant contained or deemed to be contained in a debenture or trust deed by virtue of sub-section (3.) of this section, the corporation and each officer of the corporation who is in default is guilty of an offence against this Ordinance.

Penalty: Two hundred pounds.

Default penalty: Ten pounds.

Liability of trustees for debenture holders. U.K. s. 88.

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

(2.) The last preceding sub-section does not invalidate—

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

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

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

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

(3.) Sub-section (1.) of this section does not operate—

(*a*) to invalidate any provision in force at the commencement of this Ordinance so long as any trustee then entitled to the benefit of that provision remains a trustee of the deed in question; or

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

Division 5.—Interests other than Shares, Debentures, &c.

Interpretation.
N.S.W. s. 173A.
Vic. s. 63.
Qld. s. 83A.
S.A. s. 114A.
W.A. s. 98A.
Tas. s. 62.

76.—(1.) In this Division and in the Seventh Schedule, unless the contrary intention appears—

"company" means a public company, and includes a corporation that is a public company under the law of a proclaimed State and is registered as a foreign company in the Territory;

"financial year", in relation to a deed, means the period of twelve months ending on the thirtieth day of June or on such other date as is specified in lieu thereof in the deed;

"interest" means any right to participate or interest, whether enforceable or not and whether actual, prospective or contingent—

(*a*) in any profits, assets or realization of any financial or business undertaking or scheme whether in the Territory or elsewhere;

(*b*) in any common enterprise, whether in the Territory or elsewhere, in which the holder of the right or interest is led to expect profits, rent or interest from the efforts of the promoter of the enterprise or a third party; or

(*c*) in any investment contract,

whether or not the right or interest is evidenced by a formal document and whether or not the right or interest relates to a physical asset, but does not include—

(*d*) any share in or debenture of a corporation;

(*e*) any interest in or arising out of a policy of life insurance; or

(*f*) any interest in a partnership agreement;

"investment contract" means any contract, scheme or arrangement which in substance and irrespective of the form thereof involves the investment of money in or under such circumstances that the investor acquires or may acquire an interest in or right in respect of property which under or in accordance with the terms of investment will, or at the option of the investor may, be used or employed in common with any other interest in or right in respect of property acquired in or under like circumstances;

"management company", in relation to any interests issued or proposed to be issued or any deed that relates to any interests issued or proposed to be issued, means a company by or on behalf of which the interests have been or are proposed to be issued, and includes any person for the time being exercising the functions of the management company;

"proclaimed State" means a State or other Territory of the Commonwealth declared by Proclamation to be a proclaimed State or Territory for the purposes of this Division.

(2.) A reference in this Division to a deed shall be read as including a reference to any instrument amending or affecting the deed.

Approved deeds. Qld. s. 83B. S.A. s. 114B. W.A. s. 98B.

77. For the purposes of this Division, a deed is an approved deed if—

(*a*) the Registrar has granted his approval to the deed under this division; and

(*b*) the Attorney-General has granted his approval under this Division to the trustee or representative appointed for the purposes of the deed acting as trustee or representative and that approval has not been revoked and the trustee or representative has not ceased to hold office.

Approval of deeds. Qld. s. 83C. S.A. s. 114C. W.A. s. 98C.

78.—(1.) Where a deed makes provision for the appointment of a company as trustee for or representative of the holders of interests issued or proposed to be issued by a company, the Registrar may, subject to this section, grant his approval to the deed.

(2.) The Registrar shall not grant his approval to a deed unless the deed—

(*a*) complies with the requirements of this Division, and

(*b*) makes provision for such other matters and things as are required by or under the regulations to be included in the deed.

(3.) Within seven days after a deed has been approved under this section, the management company shall lodge in the office of the Registrar the deed, or a copy of the deed verified as prescribed by statutory declaration, and the copy shall for all purposes, in the absence of proof that it is not a true copy, be regarded as an original.

Approval of trustees.
N.S.W. s. 173E.
S.A. s. 114D.
W.A. s. 98D.

79.—(1.) The Attorney-General may, subject to such terms and conditions as he thinks fit, grant his approval to a company acting as trustee or representative for the purposes of a deed.

(2.) The Attorney-General may, at any time, by reason of a breach of a term or condition subject to which the approval was granted or for any other reason, revoke an approval granted by him under this section.

Covenants to be included in deeds.
N.S.W. s. 173F.
Qld. s. 83E.
S.A. s. 114E.
W.A. s. 98E.

80.—(1.) A deed shall, for the purposes of paragraph (*a*) of sub-section (2.) of section seventy-eight of this Ordinance, contain covenants to the following effect, namely:—

(*a*) a covenant binding the management company that it will use its best endeavours to carry on and conduct its business in a proper and efficient manner and to ensure that any undertaking, scheme or enterprise to which the deed relates is carried on and conducted in a proper and efficient manner;

(*b*) covenants binding the management company—

(i) that the management company will pay to the trustee or representative, within thirty days after the receipt by the company, any moneys that, under the deed, are payable by the company to the trustee or representative;

(ii) that the management company will not sell any interest to which the deed relates otherwise than at a price calculated in accordance with the provisions of the deed;

(iii) that the management company will, at the request of the holder of an interest, purchase that interest from the holder and that the purchase price will be a price calculated in accordance with the provisions of the deed; and

(iv) that the management company will not, without the approval of the trustee or representative, publish or cause to be published any advertisement, circular or other document containing any statement with respect to the sale price of interests to which the deed relates or the yield therefrom or containing any invitation to buy interests;

(*c*) covenants binding the trustee or representative that it will—

(i) exercise all due diligence and vigilance in carrying out its functions and duties and in watching the rights and interests of the holders of the interests to which the deed relates;

(ii) keep or cause to be kept proper books of account in relation to those interests;

(iii) cause those accounts to be audited at the end of each financial year by a registered company auditor; and

(iv) send or cause to be sent by post a statement of the accounts with the report of the auditor thereon within two months of the end of the financial year to each of the holders of those interests;

(*d*) a covenant binding the management company and the trustee or representative, respectively, that no moneys available for investment under the deed will be invested in or lent to the management company, or to the trustee or representative, or to any company (other than a banking corporation or a corporation declared pursuant to paragraph (*b*) of sub-section (5.) of section thirty-eight of this Ordinance to be an authorized dealer in the short term money market) which is, by virtue of sub-section (5.) of section six of this Ordinance, deemed to be related to the management company or to the trustee or representative;

(*e*) a covenant binding the management company that, to the same extent as if the trustee or representative were a director of the company, the company will—

(i) make available to the trustee or representative, or to any registered company auditor appointed by it, for inspection the whole of the books of the company, whether kept at the registered office or elsewhere; and

(ii) give to the trustee or representative or to any such auditor such oral or written information as it or he requires with respect to all matters relating to the undertaking, scheme or enterprise of the company or any property (whether

acquired before or after the date of the deed) of the company or otherwise relating to the affairs thereof;

(*f*) a covenant binding the management company that the management company will make available, or ensure that there is made available, to the trustee or representative such details as the trustee or representative requires with respect to all matters relating to the undertaking, scheme or enterprise to which the deed relates;

(*g*) covenants binding the management company and the trustee or representative, respectively, that the management company or the trustee or representative, as the case may be, will not exercise the right to vote in respect of any shares relating to the interests to which the deed relates held by the management company, trustee or representative at any election for directors of a corporation whose shares are so held without the consent of the majority of the holders of the interests to which the deed relates present in person and voting given at a meeting of those holders summoned in the manner provided for in sub-paragraphs (i) and (ii) of the next succeeding paragraph of this sub-section for the purpose of authorizing the exercise of the right at the next election; and

(*h*) a covenant binding the management company that the management company will (within twenty-one days after an application is delivered to the company at its registered office, being an application by not less than fifty, or one-tenth in number, whichever is the less, of the holders of the interests to which the deed relates)—

(i) by sending notice by post of the proposed meeting at least seven days before the proposed meeting to each of those holders at his last-known address or, in the case of joint holders, to the joint holder whose name stands first in the company's records; and

(ii) by publishing at least fourteen days before the proposed meeting an advertisement giving notice of the meeting in a daily newspaper published in the Territory,

summon a meeting of the holders for the purpose of laying before the meeting the accounts and balance-sheet which were laid before the last preceding annual general meeting of the management company or the last audited statement of accounts of the trustee or representative, and for the purpose of giving to the trustee or representative such directions as the meeting thinks proper.

(2.) A meeting summoned for the purposes of a covenant contained in a deed in pursuance of paragraph (*g*) or (*h*) of the last preceding sub-section shall be held at the time and place specified in the notice and advertisement, being a time not later than two months after the giving of the notice, under the chairmanship of—

(*a*) such person as is appointed in that behalf by the holders of the interests to which the deed relates present at the meeting; or

(*b*) where no such appointment is made, a nominee of the trustee or representative approved by the Registrar,

and shall be conducted in accordance with the provisions of the deed or, insofar as the deed makes no provision, as directed by the chairman of the meeting.

(3.) Notwithstanding anything to the contrary contained in an approved deed, the undertaking, scheme, enterprise, contract or arrangement to which the deed relates may be continued in operation or existence if it appears to be in the interests of the holders of the interests to which the deed relates during such period as is, or such periods as are, agreed upon by the trustee or representative and the management company.

(4.) Where a direction is given to the trustee or representative at a meeting summoned pursuant to a covenant complying with paragraph (*h*) of sub-section (1.) of this section, the trustee or representative—

(*a*) shall comply with the direction unless it is inconsistent with the deed or this Ordinance; and

(*b*) is not liable for anything done or omitted to be done by it by reason only of its following that direction.

(5.) Where the trustee or representative is of the opinion that any direction so given is inconsistent with the deed or this Ordinance or is otherwise objectionable, the trustee or representative may apply to the Court for an order confirming, setting aside or varying the direction, and the Court may make such order as it thinks fit.

Interests to be issued by companies only.
N.S.W. s. 173B.
Qld. s. 83F.
S.A. s. 114F.
W.A. s. 98F.

81. No person except a company or an agent of a company authorized in that behalf under the seal of the company shall issue or offer to the public for subscription or purchase, or shall invite the public to subscribe for or purchase, any interest.

Statement to be issued.
N.S.W. s. 173C.
Qld. s. 83G.
S.A. s. 114G.
W.A. s. 98G.

82.—(1.) Before a company or an agent of a company issues or offers to the public for subscription or purchase, or invites the public to subscribe for or purchase, any interest, the company shall issue or cause to be issued a statement in writing in connexion therewith, and the statement shall, for all purposes, be deemed to be a prospectus issued by a company and, subject to the next succeeding sub-section, all provisions of this Ordinance and rules of law relating to prospectuses, or to the offering or to intended offering of shares for subscription or purchase to the public, shall, with such adaptations as are necessary, apply and have effect accordingly as if the interest were shares offered or intended to be offered to the public for subscription or purchase and as if persons accepting any offer or invitation in respect of or subscribing for or purchasing any such interest were subscribers for shares.

(2.) Subject to the next succeeding sub-section, the statement shall set out—

(*a*) the matters and reports specified in the Seventh Schedule; and

(*b*) such other matters as are required by or under the regulations to be set out in the statement,

with such adaptations as the circumstances of each case require and the Registrar approves.

(3.) A matter or report referred to in the last preceding sub-section may be omitted from a statement if, having regard to the nature of the interest, the Registrar is of the opinion that the matter or report is not appropriate for inclusion in the statement and has by writing under his hand approved the omission.

No issue without approved deed.
N.S.W. s. 173D
Qld. s. 83H.
S.A. s. 114H.
W.A. s. 98H.

83.—(1.) A person shall not issue or offer to the public for subscription or purchase, or invite the public to subscribe for or purchase, any interest unless, at the time of the issue, offer or invitation, there is in force, in relation to the interest, a deed that is an approved deed.

(2.) A person shall not, in any deed, prospectus, statement, advertisement or other document relating to any interest, make any reference to an approval of a deed or of a trustee or representative granted under this Division.

(3.) Where—

(*a*) an interest issued by a corporation before the date of commencement of this Ordinance is in existence immediately before that date;

(*b*) this Division would have applied in relation to the issue of the interest if the interest had been issued on or after that date;

(*c*) there is not, at the expiration of three months after that date, a deed that is an approved deed in force in relation to the interest; and

(*d*) the corporation did not, within a period of one month after that date, apply for approval under this Division of a deed in relation to the interest or, if it did so apply, approval was refused,

the corporation shall, within fourteen days after the expiration of the period referred to in paragraph (c) of this sub-section, give to the holder of the interest and to the Registrar notice in writing that there is not in force in relation to that interest a deed that is an approved deed, and, if this sub-section is not complied with, each director of the corporation shall, in addition to the corporation, be deemed to have failed to comply with this sub-section.

(4.) The Attorney-General may modify the application to a corporation of the last preceding sub-section by extending any period referred to in that sub-section or may exempt any corporation from compliance with that sub-section.

(5.) Nothing in sub-section (3.) of this section shall be construed as authorizing the Registrar to grant his approval to a deed that relates to an interest issued by a corporation that is not a company for the purposes of this Division.

Register of interest holders.

84.—(1.) The management company shall, in respect of each deed with which the company is concerned, keep a register of the holders of interests under the deed and enter therein—

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

(*b*) the extent of the holding of each holder and, if his interest consists of a specific interest in any property, a description of the property and its location sufficient to identify it;

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

(*d*) the date at which any person ceased to be a holder.

(2.) The provisions of Division 4 of Part V. apply, so far as are applicable and with such adaptations as are necessary, to and in relation to the register.

(3.) A management company that—

(*a*) keeps a register of holders of interests at a place within three miles of the office of the Registrar; and

(*b*) provides reasonable accommodation and facilities for persons to inspect and take copies of its list of interest holders,

need not comply with the provisions of paragraph (*a*) of subsection (1.) of the next succeeding section in relation to the deed under which the interests are held unless the Attorney-General, by notice published in the *Gazette*, otherwise directs.

Returns, information, &c., relating to interests.
N.S.W. s. 173G.
Qld. s. 83J.
S.A. s. 114J.
W.A. s. 98I.

85.—(1.) Where a deed is or has at any time been an approved deed, the management company shall, so long as the deed or any deed in substitution in whole or in part for the deed, remains in force, lodge with the Registrar, within two months after the end of each financial year applicable to the deed—

(*a*) a return in the prescribed form containing a list of all persons who, at the end of the financial year, were holders of the interests to which the deed relates, showing the name and address of each holder and the extent of his holding and, if his interest consists of a specific interest in any property, a description of the property and its location sufficient to identify it;

(*b*) a summary of—

(i) all purchases and sales of land and marketable securities affecting the interests of the holders during the financial year; and

(ii) all other investments affecting the interests of the holders made during the financial year, showing the descriptions and quantities of those investments;

(*c*) a statement of the total amount of brokerage affecting the interests of the holders paid or charged by the management company during the financial year and the proportion thereof paid to any stock or share broker, or to any partner, employee or nominee of any stock or share broker, who is an officer of the company, and the proportion retained by the company;

(*d*) a list of all parcels of land and marketable securities, and other investments, held by the trustee or representative in relation to the deed, as at the end of the financial year, showing the value of the land, securities or other investments and the basis of valuations; and

(*e*) such other statements and particulars, if any, as may be prescribed.

(2.) A document required to be lodged with the Registrar by the management company under the last preceding sub-section shall be signed by at least one director of the management company.

(3.) A company to which sub-section (1.) of this section applies shall, if so requested by any holder of an interest to which the deed relates within a period of one month after the end of the financial year, send by post or cause to be sent by post to the holder, within a period of two months after the end of the financial year, a copy of the documents that the company is required to lodge with the Registrar by virtue of paragraphs (*b*) to (*e*) (inclusive) of sub-section (1.) of this section.

Penalty for contravention of Division, &c.
N.S.W. s. 173I.
Qld. ss. 83K–83L.
S.A. ss. 114K–114L.
W.A. ss. 98K–98L.

86.—(1.) A person shall not—

(*a*) contravene or fail to comply with a provision of this Division; or

(*b*) fail to comply with a covenant contained or deemed to be contained in any deed that is or at any time has been an approved deed.

Penalty: Five hundred pounds or imprisonment for twelve months.

(2.) A person is not relieved from any liability to a holder of an interest by reason of being convicted of an offence under this section.

Winding up of schemes, &c.

87.—(1.) Where the management company under a deed is in liquidation or where, in the opinion of the trustee or representative, the management company has ceased to carry on business or has, to the prejudice of holders of interests to which the deed relates, failed to comply with a provision of the deed, the trustee or representative shall summon a meeting of the holders.

(2.) A meeting under the last preceding sub-section shall be summoned—

(*a*) by sending by post notice of the proposed meeting at least twenty-one days before the proposed meeting, to each holder at his last known address or, in the case of joint holders, to the joint holder whose name stands first in the company's records; and

(*b*) by publishing, at least twenty-one days before the proposed meeting, an advertisement giving notice of the meeting in a daily newspaper published in the Territory.

(3.) The provisions of sub-section (2.) of section eighty apply to such a meeting as if the meeting were a meeting referred to in that sub-section.

(4.) If at any such meeting a resolution is passed by a majority of not less than three-fourths in value of the holders of the interests present in person and voting at the meeting that the undertaking, scheme, enterprise, contract or arrangement to which the deed relates be wound up, the trustee or representative shall apply to the Court for an order confirming the resolution.

(5.) On an application by the trustee or representative, the Court may, if it is satisfied that it is in the interest of the holders of the interests, confirm the resolution and may make such orders as it thinks necessary or expedient for the effective winding up of the undertaking, scheme, enterprise, contract or arrangement.

Power to exempt from compliance with Division and non-application of Division in certain circumstances.
Qld. s. 83M.
S.A. s. 114M.
W.A. s. 98M.

88.—(1.) The Attorney-General may, by notice published in the *Gazette*, exempt any company, subject to such terms and conditions as are specified in the notice, from complying with all or any of the provisions of this Division in relation to any interest, or class of interests, specified in the notice.

(2.) This Division does not apply in the case of the sale of any interest by a personal representative, liquidator, receiver or trustee in bankruptcy in the normal course of realization of assets.

Liability of trustees.
U.K. s. 88.
Qld. s. 83N.
S.A. s. 114N.
W.A. s. 98N.

89.—(1.) Subject to this section, a provision contained in a deed that is or at any time has been an approved deed, or in a contract with the holders of interests to which such a deed relates, is void in so far as it would have the effect of exempting a trustee or representative under the deed from, or indemnifying the trustee or representative against, liability for breach of trust where the trustee or representative fails to show the degree of care and diligence required of a trustee or representative having regard to the provisions of the deed conferring on the trustee or representative any powers, authorities or discretions.

(2.) The last preceding sub-section does not invalidate—

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

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

(i) on the agreement thereto of a majority of not less than three-fourths in nominal value of holders of interests present in person and voting at a meeting summoned for the purpose; and

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

Division 6.—Title and Transfers.

Nature of shares.
U.K. s. 73.
N.S.W. s. 174.
Vic. s. 64.
Qld. s. 74.
S.A. s. 83.
W.A. s. 81.
Tas. s. 63.

90. The shares or other interest of a member in a company are personal estate, transferable in the manner provided by the articles, and are not of the nature of real estate.

Numbering of shares.
U.K. s. 74.
N.S.W. s. 174.
Vic. s. 65.
Qld. s. 74.
S.A. s. 83.
W.A. s. 81.
Tas. s. 64.

91.—(1.) Each share in a company shall be distinguished by an appropriate number.

(2.) Notwithstanding the last preceding sub-section—

(*a*) if at any time all the issued shares in a company or all the issued shares therein of a particular class are fully paid up and rank equally for all purposes, none of those shares need thereafter have a distinguishing number so long as each of those shares remains fully paid up and ranks equally for all purposes with all shares of the same class for the time being issued and fully paid up; or

(*b*) if all the issued shares in a company are evidenced by certificates in accordance with the provisions of the next succeeding section and each certificate is distinguished by an appropriate number and that number is recorded in the register of members, none of those shares need have a distinguishing number.

Certificate to be evidence of title.
U.K. s. 81.
N.S.W. s. 180.
Vic. s. 66.
Qld. s. 80.
S.A. s. 90.
W.A. s. 87 (4).
Tas. s. 65.

92.—(1.) A certificate under the common or official seal of a company specifying any shares held by any member of the company is evidence of the title of the member to the shares.

(2.) Every share certificate shall be under the common seal of the company or, in the case of a share certificate relating to shares on a branch register, the common or official seal of the company and shall state—

(*a*) the name of the company and the authority under which the company is constituted;

(*b*) the address of the registered office of the company in the Territory or, where the certificate is issued by a branch office, the address of that branch office; and

(*c*) the nominal value and the class of the shares and the extent to which the shares are paid up.

(3.) Failure to comply with this section does not affect the rights of any holder of shares.

(4.) If default is made in complying with this section, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Company may have duplicate common seal. Vic. s. 66. (4).

93. A company may, if authorized by its articles, have a duplicate common seal which shall be a facsimile of the common seal of the company with the addition on its face of the words "Share Seal", and a certificate under such duplicate seal shall be deemed to be sealed with the common seal of the company for the purposes of this Ordinance.

Loss or destruction of certificates. N.S.W. s. 182. Vic. s. 66 (3). S.A. s. 379. W.A. s. 414. Tas. s. 65.

94.—(1.) Subject to the next succeeding sub-section, where a certificate or other document of title to shares or debentures is lost or destroyed, the company shall, on payment of a fee not exceeding Five shillings, issue a duplicate certificate or document in lieu thereof to the owner on his application accompanied by—

(*a*) a statutory declaration that the certificate or document has been lost or destroyed and has not been pledged, sold or otherwise disposed of, and, if lost, that proper searches have been made; and

(*b*) an undertaking in writing that, if it is found or received by the owner, it will be returned to the company.

(2.) The directors of the company may, before accepting an application for the issue of a duplicate certificate or document, require the applicant—

(*a*) to cause an advertisement to be inserted in a daily newspaper circulating in a place specified by the directors stating that the certificate or document has been lost or destroyed and that the owner intends, after the expiration of fourteen days after the publication of the advertisement, to apply to the company for a duplicate; or

(*b*) to furnish a bond for an amount equal to at least the current market value of the shares or debentures indemnifying the company against loss following on the production of the original certificate or document,

or may require the applicant to do both of those things.

Transfers.
U.K. ss. 75–76, 82.
N.S.W. ss. 175–176, 181.
Vic. s. 67.
Qld. ss. 75–76.
S.A. ss. 84–85.
W.A. ss. 82–83 89.
Tas. s. 66.

95.—(1.) Notwithstanding anything in its articles, a company shall not register a transfer of shares or debentures unless a proper instrument of transfer has been delivered to the company, but this sub-section does not prejudice any power to register as a shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

(2.) A transfer of a share, debenture or other interest of a deceased member made by his personal representative is, although the personal representative is not himself a member of the company, as valid as if he had been such a member at the time of the execution of the instrument of transfer.

(3.) Where the personal representative of a deceased member duly constituted as such under the law of a State or of another Territory of the Commonwealth—

(*a*) executes an instrument of transfer of a share or debenture of the deceased member to himself or to another person; and

(*b*) delivers the instrument to the company, together with an affidavit made by him to the effect that, to the best of his knowledge, information and belief, no grant of representation of the estate of the deceased member has been applied for or made in the Australian Capital Territory and no application for such a grant will be made (being an affidavit sworn within the period of fourteen days immediately preceding the date of delivery of the affidavit to the company),

the company shall register the transfer and pay to the personal representative any dividends or other moneys accrued in respect of the share or debenture up to the time of the execution of the instrument, but this sub-section does not operate so as to require the company to do any act or thing that it would not have been required to do if the personal representative were the personal representative of the deceased member duly constituted under the law of the Australian Capital Territory.

(4.) A transfer or payment made in pursuance of the last preceding sub-section, and any receipt or acknowledgment of such a payment, is for all purposes as valid and effectual as if the personal representative were the personal representative of the deceased member duly constituted under the law of the Territory.

(5.) The production to a company of a document that is under the law of the Territory or under the law of a State or of another Territory of the Commonwealth, sufficient evidence of probate of the will, or letters of administration of the estate, of

a deceased person having been granted to some person shall be accepted by the company, notwithstanding anything in its articles, as sufficient evidence of the grant.

Registrations of transfer at request of transferor.
U.K. s. 77.
N.S.W. s. 177.
Vic. s. 68.
Qld. s. 77.
S.A. ss. 86, 88.
W.A. ss. 84, 86.
Tas. s. 67.

96.—(1.) On the request in writing of the transferor of any share, debenture or other interest in a company, the company shall enter in the appropriate register the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

(2.) On the request in writing of the transferor of a share or debenture, the company shall, by notice in writing, require the person having the possession, custody or control of the share certificate or debenture and the instrument of transfer thereof or either of them to bring it or them into the office of the company within a stated period, being not less than seven and not more than twenty-eight days after the date of the notice, to have the share certificate or debenture cancelled or rectified and the transfer registered or otherwise dealt with.

(3.) If a person refuses or neglects to comply with a notice given under the last preceding sub-section, the transferor may apply to the Court to issue a summons for that person to appear before the Court and show cause why the documents mentioned in the notice should not be delivered up or produced as required by the notice.

(4.) Upon appearance of a person so summoned, the Court may examine him upon oath and receive other evidence, or, if he does not appear after being duly served with such summons, the Court may receive evidence in his absence, and in either case the Court may order him to deliver up such documents to the company upon such terms or conditions as to the Court seem fit, and the costs of the summons and proceedings thereon shall be in the discretion of the Court.

(5.) Lists of share certificates or debentures called in under this section and not brought in shall be exhibited in the office of the company and shall be advertised in the *Gazette* and in such newspapers and at such times as the company thinks fit.

Notice of refusal to register transfer.
U.K. s. 78.
N.S.W. s. 178.
Vic. s. 69.
Qld. s. 78.
S.A. s. 87.
W.A. s. 85.
Tas. s. 68.

97.—(1.) If a company refuses to register a transfer of any share, debenture or other interest in the company, it shall, within two months after the date on which the transfer was lodged with it, send to the transferee notice of the refusal.

(2.) If default is made in complying with this section, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Default penalty: Ten pounds.

Certification of transfers. U.K. s. 79. Vic. s. 70. Tas. s. 69.

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

(2.) Where a person acts on the faith of a false certification by a company made negligently, the company is under the same liability to him as if the certification had been made fraudulently.

(3.) Where a certification is expressed to be limited to forty-two days or any longer period from the date of certification, the company and its officers are not, in the absence of fraud, liable in respect of the registration of any transfer of shares, debentures or other interests comprised in the certification after the expiration of the period so limited or any extension thereof given by the company if the instrument of transfer has not, within that period, been lodged with the company for registration.

(4.) For the purposes of this section—

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

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

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

(ii) the certification is signed by a person authorized to certificate transfers on the company's behalf or by an officer of the company or of a corporation so authorized; and

(*c*) a certification that purports to be authenticated by a person's signature or initials (whether handwritten or not) shall be deemed to be signed by him unless it is shown that the signature or initials were not placed there by him and were not placed there by any other person authorized to use the signature or initials for the purpose of certificating transfers on the company's behalf.

Duties of company with respect to issue of certificates.
U.K. s. 80.
N.S.W. s. 179.
Vic. s. 71.
Qld. s. 79.
S.A. s. 89.
W.A. s. 87.
Tas. s. 70.

99.—(1.) Every company shall, within two months after the allotment of any of its shares or debentures and within one month after the date on which a transfer (other than such a transfer as the company is for any reason entitled to refuse to register and does not register) of any of its shares or debentures is lodged with the company, complete and have ready for delivery all the appropriate certificates and debentures in connexion with the allotment or transfer unless the conditions of issue of the shares or debentures otherwise provide.

(2.) If default is made in complying with this section, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Default penalty: Ten pounds.

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

Division 7.—Registration of Charges.

Registration of charges.
U.K. s. 95.
N.S.W. ss. 185, 192.
Vic. s. 72.
Qld. ss. 84–85.
S.A. ss. 99–100, 108–109.
Tas. s. 71.

100.—(1.) Subject to this Division, where a charge to which this section applies is created by a company, there shall be lodged with the Registrar for registration within thirty days after the creation of the charge a statement in the prescribed form and—

(*a*) the instrument, if any, by which the charge is created or evidenced; or

(*b*) a copy thereof together with a statutory declaration in the prescribed form verifying the execution of the charge and also verifying the copy as being a true copy of the instrument,

and, if this section is not complied with in relation to the charge, the charge is, so far as any security on the company's property or undertaking is thereby conferred, void against the liquidator and any creditor of the company.

(2.) Nothing in the last preceding sub-section shall prejudice any contract or obligation for repayment of the money secured by a charge and, when a charge becomes void under this section, the money secured thereby shall immediately become payable.

(3.) The charges to which this section applies are—

(*a*) a charge (other than a charge solely on land) to secure any issue of debentures;

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

(*c*) a charge or an assignment created or evidenced by an instrument (including instruments creating or evidencing absolute bills of sale or absolute assignments or transfers of book debts) which, if executed by an individual, would be invalid or of limited effect if not registered under the *Instruments Ordinance* 1933-1949;

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

(*e*) a charge on calls made but not paid;

(*f*) a charge on a ship or aircraft or any share in a ship or aircraft;

(*g*) a charge on goodwill, on a patent or licence under a patent, on a trade mark, or on a copyright or a licence under a copyright; and

(*h*) a charge on the book debts of a company.

(4.) Where a charge created in the Territory affects property outside the Territory, the instrument creating or purporting to create the charge, or a copy thereof accompanied by the verifying statutory declaration, may be lodged for registration under and in accordance with sub-section (1.) of this section notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the place in which the property is situate.

(5.) When a series of debentures containing or giving by reference to any other instrument any charge to the benefit of which the debenture holders of that series are entitled equally is created by a company, it is sufficient if there is lodged with the Registrar for registration within thirty days after the execution of the instrument containing the charge, or, if there is no such instrument, after the execution of the first debenture of the series, a statement in the prescribed form containing the following particulars:—

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

(*b*) the dates of the resolutions authorizing the issue of the series and the date of the covering instrument, 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—

(*e*) the instrument containing the charge;

(*f*) a copy of the instrument and a statutory declaration verifying the execution of the instrument and verifying the copy to be a true copy; or

(*g*) if there is no such instrument, a copy of one of the debentures of the series and a statutory declaration verifying the copy to be a true copy.

(6.) For the purposes of the last preceding sub-section, where more than one issue is made of debentures in the series, there shall be lodged within thirty days after each issue particulars in the prescribed form of the date and amount of each issue, but an omission so to do does not affect the validity of the debentures issued.

(7.) 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 either absolutely or conditionally subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, either absolute or conditional, for any debentures, the particulars required to be lodged under this section shall include particulars as to the amount or rate per centum of the commission allowance or discount so paid or made, but omission so to do does not affect the validity of the debentures issued.

(8.) The deposit of any debentures as security for any debt of the company shall not, for the purposes of the last preceding sub-section, be treated as the issue of the debentures at a discount.

(9.) A charge to which this section applies need not be registered, and is not subject to avoidance, under the provisions of the *Instruments Ordinance* 1933-1949, and, upon registration under this Part, a charge which, but for this sub-section, would need to be registered under the provisions of that Ordinance, shall, for all purposes, have effect and be as valid as if it had been duly registered under that Ordinance.

(10.) Where—

(*a*) a charge requiring registration under this section is created before the expiration of thirty days after the creation of a prior unregistered charge;

(*b*) the charge comprises all or any part of the property comprised in the prior charge; and

(*c*) the subsequent charge is given as a security for the same debt as is secured by the prior charge or any part of that debt,

then, to the extent to which the subsequent charge is a security for the same debt or part thereof and so far as respects the property comprised in the prior charge, the subsequent charge shall not be operative or have any validity unless it is proved to the satisfaction of the Court that it was given in good faith for the purpose of correcting some material error in the prior charge or under other proper circumstances and not for the purposes of avoiding or evading the provisions of this Division.

Duty to register charges. U.K. s. 96. N.S.W. s. 186. Vic. s. 73. Qld. s. 85 (6). S.A. s.101. Tas. s. 72.

101.—(1.) Documents and particulars required to be lodged for registration in accordance with the last preceding section may be lodged for registration by the company concerned or by any person interested in the documents, but, if default is made in complying with that section, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Default penalty: Ten pounds.

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

Duty of company to register charges existing on property acquired. U.K. s. 97. Vic. s. 74. Qld. s. 87. S.A. s. 102. Tas. s. 73.

102.—(1.) Where—

(*a*) a company acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Division;

(*b*) a foreign company becomes registered in the Territory and has, prior to such registration, created a charge which, if it had been created by the company while it was registered in the Territory, would have been required to be registered under this Division; or

(*c*) a foreign company becomes registered in the Territory and has, prior to such registration, acquired property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition and while it was registered in the Territory, have been required to be registered under this Division.

the company shall cause a statement in the prescribed form and the instrument, or a copy of the instrument, by which the charge was created or is evidenced (together with a statutory declaration in the prescribed form), to be lodged with the Registrar for registration within thirty days after the date on which the acquisition is completed or the date of the registration of the company in the Territory as the case may be.

(2.) If default is made in complying with this section, the company, or the foreign company, and each officer of the company or foreign company who is in default is guilty of an offence against this Ordinance.

Default penalty: Ten pounds.

Register of charges to be kept by Registrar.
U.K. s. 98.
N.S.W. s. 187.
Vic. s. 75.
Qld. s. 86.
S.A. s. 103.
Tas. s. 74.

103.—(1.) The Registrar shall keep a register in the prescribed form of all the charges lodged for registration under this Division and shall enter in the register with respect to those charges the following particulars—

(*a*) in the case of a charge to the benefit of which the holders of a series of debentures are entitled—such particulars as are required to be contained in a statement furnished under sub-section (5.) of section one hundred of this Ordinance; and

(*b*) in the case of any other charge—

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

(ii) the amount secured by the charge;

(iii) a description sufficient to identify the property charged; and

(iv) the name of the person entitled to the charge.

(2.) The Registrar shall issue a certificate in the prescribed form of every registration stating, if applicable, the amount secured by the charge and the certificate shall be conclusive evidence that the requirements as to registration have been complied with.

Endorsement of certificate of registration on debentures.
U.K. s. 99.
N.S.W. s. 188.
Vic. s. 76.
Qld. s. 85 (5).
S.A. s. 104.
Tas. s. 75.

104.—(1.) The company shall cause to be endorsed on every debenture forming one of a series of debentures, or certificate of debenture stock which is issued by the company and the payment of which is secured by a charge registered under this Division—

(*a*) a copy of the certificate of registration; or

(*b*) a statement that the registration has been effected and the date of registration.

(2.) The last preceding sub-section does not apply to any debenture or certificate of debenture stock which has been issued by the company before the charge was registered.

(3.) A person who knowingly authorizes or permits the delivery of any debenture or certificate of debenture stock which is not endorsed as required by this section is guilty of an offence against this Ordinance.

Penalty: One hundred pounds.

Entries of satisfaction and release of property from charge.
U.K. s. 100.
N.S.W. s. 189.
Vic. s. 77.
Qld. s. 93.
S.A. s. 105.
Tas. s. 76.

105.—(1.) Where, with respect to any registered charge—

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

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

the company may lodge with the Registrar in the prescribed form a memorandum of satisfaction in whole or in part, or of the fact that the property or undertaking or any part thereof has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be, and the Registrar shall enter particulars of that memorandum in the register.

(2.) The memorandum shall be verified by a statutory declaration in the prescribed form and be supported by such evidence as the Registrar may require to satisfy him of the payment, satisfaction, release or ceasing referred to in the last preceding sub-section.

Extension of time and rectification of register of charges.
U.K. s. 101.
N.S.W. s. 190.
Vic. s. 78.
Qld. s. 92.
S.A. s. 106.
Tas. s. 77.

106.—The Court, on being satisfied that the omission to register a charge (whether under this or any corresponding previous law of the Territory) within the time required, or that the omission or mis-statement of any particular with respect to any such charge or in a memorandum of satisfaction, was accidental or due to inadvertence or to some other sufficient cause or is not of a nature to prejudice the position of creditors or shareholders or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested and on such terms and conditions as seem to the Court just and expedient, order that the time for registration be extended or that the omission or mis-statement be rectified.

Company to keep copies of charging instruments and register of charges.
U.K. ss. 103–105.
N.S.W. ss. 193–198.
Vic. s. 80.
Qld. s. 95.
S.A. ss. 110–112.
W.A. ss. 95–97.
Tas. s. 79.

107.—(1.) Every company shall cause a copy of every instrument creating any charge requiring registration under this Division to be kept at the registered office of the company but, in the case of a series of debentures, the keeping of a copy of one debenture of the series is sufficient for the purposes of this sub-section.

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

(3.) The copies of instruments and the register of charges kept in pursuance of this section shall be open to the inspection of any creditor or member of the company without fee, and the register of charges shall also be open to the inspection of any other person on payment of such fee, not exceeding Five shillings for each inspection, as is fixed by the company.

(4.) If default is made in complying with any provision of this section, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Penalty: One hundred pounds.

Default penalty: Ten pounds.

Documents made out of the Territory.
Vic. s. 72 (1).

108. Where under this Division an instrument, deed, statement or other document is required to be lodged with the Registrar within a specified time, the time so specified shall, by force of this section, in relation to an instrument, deed, statement or other document executed or made in a place out of the Territory, be extended by seven days or such further period as the Registrar may from time to time allow.

Charges, &c., created before commencement of Ordinance.

109. Except as is otherwise expressly provided, this Division applies to any charge that, immediately before the commencement of this Ordinance, was registrable under the repealed Ordinance but which at that time was not registered under that Ordinance.

Application of Division.
N.S.W. s. 198.
S.A. s. 113.
Vic. s. 308.

110. A reference in this Division to a company shall be read as including a reference to a foreign company to which Division 3 of Part XI. applies, but nothing in this Division applies to a charge on property outside the Territory of a foreign company.

PART V.—MANAGEMENT AND ADMINISTRATION.

Division 1.—Office and Name.

Registered office of company.
U.K. s. 107.
N.S.W. s. 75.
Vic. s. 95.
Qld. s. 104.
S.A. s. 115.
W.A. s. 99.
Tas. s. 80.

111.—(1.) A company shall, as from the day on which it begins to carry on business or as from the fourteenth day after the date of its incorporation, whichever is the earlier, have a registered office within the Territory to which all communications and notices may be addressed and which shall be open and accessible to the public for not less than three hours between the hours of nine o'clock in the morning and five o'clock in the evening of each day, Saturdays, Sundays and public holidays excepted.

(2.) If default is made in complying with this section, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Default penalty: Ten pounds.

Office hours.
U.K. s. 107.
N.S.W. s. 75.
Vic. s. 95.
Qld. s. 104.
S.A. s. 115.
W.A. s. 99.
Tas. s. 80.

112.—(1.) Notice in the prescribed form of the situation of the registered office, the days and hours during which it is open and accessible to the public, and of any change therein, shall be lodged with the Registrar within one month after the date of incorporation or of any such change, as the case may be, but no notice of the days and hours during which the office is open and accessible to the public is required if the office is open for at least five hours between ten o'clock in the forenoon and four o'clock in the afternoon of each day, Saturdays, Sundays and public holidays excepted.

(2.) If default is made in complying with this section, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Default penalty: Ten pounds.

Publication of name.
U.K. s. 108.
N.S.W. s. 76.
Vic. s. 96.
Qld. s. 105.
S.A. s. 117.
W.A. s. 101.
Tas. s. 81.

113.—(1.) The name of a company shall appear in legible characters on—

(*a*) its seal; and

(*b*) all business letters, statements of account, invoices, official notices, publications, bills of exchange, promissory notes, endorsements, cheques, orders, receipts and letters of credit of or purporting to be issued or signed by or on behalf of the company,

and, if default is made in complying with this sub-section, the company is guilty of an offence against this Ordinance.

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

(*a*) uses or authorizes the use of any seal purporting to be a seal of the company whereon its name does not so appear;

(*b*) issues or authorizes the issue of any business letter, statement of account, invoice or official notice or publication of the company whereon its name does not so appear; or

(*c*) signs, issues or authorizes to be signed or issued on behalf of the company any bill of exchange, promissory note, cheque or other negotiable instrument or any indorsement, order, receipt or letter of credit whereon its name does not so appear,

he is guilty of an offence against this Ordinance.

(3.) Every company shall paint or affix, and keep painted or affixed, on the outside of every office or place in which its business is carried on, in a conspicuous position and in letters easily legible, its name, and also, in the case of the registered office, the words " Registered Office ", and, if it fails so to do, the company is guilty of an offence against this Ordinance.

Default penalty: Ten pounds.

Division 2.—Directors and Officers.

Directors.
U.K. s. 176.
N.S.W. s. 120.
Vic. s. 97.
Qld. s. 149.
S.A. s. 160.
W.A. s. 145.
Tas. s. 83.

114.—(1.) Every public company shall have at least three directors and every proprietary company shall have at least one director.

(2.) In the case of a public company, at least two directors shall be natural persons who ordinarily reside within the Commonwealth and, in the case of a proprietary company, at least one director shall be a natural person who ordinarily so resides.

(3.) The last preceding sub-section does not apply in relation to a company incorporated before the date of commencement of this Ordinance until the expiration of a period of three months after that date.

Restrictions on appointment or advertisement of director.
U.K. s. 181.
N.S.W. s. 121.
Vic. s. 98.
Qld. s. 150.
S.A. s. 161.
W.A. s. 146.
Tas. s. 84.

115.—(1.) A person shall not be named as a director or proposed director in the memorandum or articles of a company, or in a prospectus or a statement in lieu of prospectus, unless, before the registration of the memorandum or articles or the issue of the prospectus or the lodging of the statement in lieu of prospectus, as the case may be, he has, by himself or by his agent authorized in writing for the purpose, signed and lodged with the Registrar a consent in writing in the prescribed form to act as a director and—

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

(*b*) signed and lodged with the Registrar an undertaking in writing in the prescribed form to take from the company and pay for his qualification shares, if any;

(*c*) made and lodged with the Registrar a statutory declaration in the prescribed form to the effect that a number of shares, not less than his qualification, if any, is registered in his name; or

(*d*) in the case of a company formed or intended to be formed by way of reconstruction of another corporation or group of corporations or to acquire the shares in another corporation or group of corporations—made and lodged with the Registrar a statutory declaration in the prescribed form that he was a shareholder in that other corporation or in one or more of the corporations of that group and that, as a shareholder, he will be entitled to receive and have registered in his name a number of shares not less than his qualification by virtue of the terms of an agreement relating to the reconstruction.

(2.) Where a person has signed and lodged an undertaking to take and pay for his qualification shares, he shall, as regards those shares, be in the same position as if he had signed the memorandum for that number of shares.

(3.) The foregoing provisions of this section (other than the provisions relating to the signing of a consent to act as director) do not apply to—

(*a*) a company not having a share capital;

(*b*) a proprietary company; or

(*c*) a prospectus or a statement in lieu of prospectus issued or lodged with the Registrar by or on behalf of a company or the articles adopted by a company after the expiration of one year from the date on which the company was entitled to commence business.

(4.) On the lodging of the memorandum of a company for registration, the persons desiring the incorporation of the company shall also lodge with the Registrar a list in the prescribed form, certified by one of those persons to be correct, of the persons who have consented to be directors of the company, and, if the list contains the name of a person who has not so consented, the person who certified the list to be correct is guilty of an offence against this Ordinance.

Qualification of director.
U.K. s. 182.
N.S.W. s. 122.
Vic. s. 99.
Qld. s. 151.
S.A. s. 162.
W.A. s. 147.
Tas. s. 85.

116.—(1.) Without affecting the operation of any of the preceding provisions of this Division, a director who is by the articles required to hold a specified share qualification and who is not already qualified shall obtain his qualification within two months after his appointment or such shorter period as is fixed by the articles.

(2.) Unless otherwise provided by the articles, the qualification of any director of a company must be held by him solely and not as one of several joint holders.

(3.) A director shall vacate his office if he has not within the period referred to in sub-section (1.) of this section obtained his qualification or, if after so obtaining it, he ceases at any time to hold his qualification.

Penalty: Two hundred pounds.

Default penalty: Ten pounds.

(4.) A person vacating office under this section is incapable of being re-appointed as director until he has obtained his qualification.

Undischarged bankrupts acting as directors.
U.K. s. 187.
N.S.W. s. 123.
Vic. s. 100.
Qld. s. 152.
S.A. s. 163.
W.A. s. 148.
Tas. s. 86.

117.—(1.) A person who, being an undischarged bankrupt, acts as director of, or directly or indirectly takes part in or is concerned in the management of, a corporation except with the leave of the Court is guilty of an offence against this Ordinance.

Penalty: Five hundred pounds or imprisonment for six months, or both.

(2.) The Court shall not give leave to any person under this section unless notice of intention to apply therefor has been served on the Attorney-General, by post or otherwise, and the Attorney-General may be represented at the hearing of the application.

Appointment of directors to be voted on individually.
U.K. s. 183.
Vic. s. 101.
Tas. s. 87.

118.—(1.) At a general meeting of a public company, a motion for the appointment of two or more persons as directors by a single resolution shall not be moved unless a resolution that it be moved has first been agreed to by the meeting without any vote being given against it.

(2.) A resolution passed in pursuance of a motion moved in contravention of this section is void, whether or not its being so moved was objected to at the time.

(3.) Where a resolution pursuant to a motion moved in contravention of this section is passed, no provision for the automatic re-appointment of retiring directors in default of another appointment shall apply.

(4.) For the purposes of this section, a motion for approving a person's appointment or for nominating a person for appointment shall be treated as a motion for his appointment.

(5.) Nothing in this section applies to a resolution altering the company's articles.

(6.) Nothing in this section prevents the election of two or more directors by ballot or poll.

Validity of acts of directors and officers.
U.K. s. 180.
N.S.W. s. 124.
Vic. s. 102.
Qld. s. 153.
S.A. s. 164.
W.A. s. 149.
Tas. s. 88.

119. The acts of a director, manager or secretary are valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

Removal of directors.
U.K. s. 184.
Vic. s. 103.
Tas. s. 89.

120.—(1.) A public company may, by ordinary resolution, remove a director before the expiration of his period of office notwithstanding anything in its articles or in any agreement between it and him, but, where any director so removed was appointed to represent the interests of any particular class of shareholders or debenture holders, the resolution to remove him shall not take effect until his successor has been appointed.

(2.) Special notice shall be required of any resolution to remove a director under this section, or to appoint some person in place of a director so removed at the meeting at which he is removed, and, on receipt of notice of an intended resolution to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned, and the director (whether or not he is a member of the company) shall be entitled to be heard on the resolution at the meeting.

(3.) Where notice is given pursuant to the last preceding sub-section and the director concerned makes with respect thereto representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so—

(*a*) in any notice of the resolution given to members of the company—state the fact of the representations having been made; and

(*b*) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company),

and, if a copy of the representations is not so sent because they were received too late or because of the company's default, the director may, without prejudice to his right to be heard orally, require that the representations be read out at the meeting.

(4.) Notwithstanding the preceding provisions of this section, copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter, and the Court may order the

company's costs on an application under this section to be paid in whole or in part by the director, notwithstanding that he is not a party to the application.

(5.) A vacancy created by the removal of a director under this section, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.

(6.) A person appointed director in place of a person removed under this section shall be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become a director on the day on which the person in whose place he is appointed was last appointed a director.

(7.) Nothing in the preceding provisions of this section shall be taken as depriving a person removed thereunder of compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director or as derogating from any power to remove a director which may exist apart from this section.

(8.) A director of a public company shall not be removed by, or be required to vacate his office, by reason of any resolution, request or notice of the directors or any of them notwithstanding anything in the articles or any agreement.

Age limit for directors. U.K. s. 185.

121.—(1.) Subject to this section, no person of or over the age of seventy-two years shall be appointed a director of a public company or of a subsidiary of a public company.

(2.) The office of a director of a public company or of a subsidiary of a public company shall become vacant at the conclusion of the annual general meeting commencing next after he attains the age of seventy-two years or, if he has attained the age of seventy-two years before the commencement of this Ordinance, at the conclusion of the annual general meeting commencing next after the commencement of this Ordinance.

(3.) Any act done by a person as director is valid notwithstanding that it is afterwards discovered that his appointment had terminated by virtue of the last preceding sub-section.

(4.) Where the office of a director has become vacant by virtue of sub-section (2.) of this section, no provision for the automatic re-appointment of retiring directors in default of another appointment shall apply in relation to that director.

(5.) If any such vacancy has not been filled at the meeting at which the office became vacant, the office may be filled as a casual vacancy.

(6.) Notwithstanding anything in this section, a person of or over the age of seventy-two years may, by a resolution of which no shorter notice than that required to be given to the members of the company of an annual general meeting has been

duly given and which is passed by a majority of not less than three-fourths of such members of the company as being entitled so to do vote in person or, where proxies are allowed, by proxy, at a general meeting of that company, be appointed or re-appointed as a director of that company to hold office until the next annual general meeting of the company or be authorized to continue in office as a director until the next annual general meeting of the company.

(7.) Nothing in this section limits or affects the operation of any provision of the memorandum or articles of a company preventing any person from being appointed a director or requiring any director to vacate his office at any age less than seventy-two years.

Power to restrain certain persons from managing companies.

U.K. s. 188. N.S.W. s. 255. Vic. s. 104. Qld. s. 224. S.A. s. 290. W.A. ss. 226, 281. Tas. s. 90.

122.—(1.) Where a person is convicted whether within or without the Territory—

(*a*) on indictment of any offence in connexion with the promotion, formation or management of a corporation;

(*b*) of any offence involving fraud or dishonesty punishment on conviction with imprisonment for three months or more; or

(*c*) of any offence under section one hundred and twenty-four or under section three hundred and three of this Ordinance,

and that person, within a period of five years after his conviction or, if he is sentenced to imprisonment, after his release from prison, is, without the leave of the Court, a director or promoter of or is in any way whether directly or indirectly concerned or takes part in the management of a company, he is guilty of an offence against this Ordinance.

Penalty: Two hundred pounds or imprisonment for six months, or both.

(2.) A person intending to apply for the leave of the Court under this section shall give to the Attorney-General not less than ten days' notice of his intention so to apply.

(3.) On the hearing of any application under this section, the Attorney-General may be represented at the hearing of and may oppose the granting of the application.

Disclosure of interests in contracts, property, offices, &c.

U.K. s. 199. N.S.W. s. 129. Vic. s. 106. Qld. ss. 156–157. S.A. s. 167. W.A. s. 154. Tas. s. 92.

123.—(1.) Subject to this section, a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company shall, as soon as practicable after the relevant facts have come to his knowledge, declare the nature of his interest at a meeting of the directors of the company.

(2.) The requirements of the last preceding sub-section do not apply in any case where the interest of the director

consists only of being a member or creditor of a corporation which is interested in a contract or proposed contract with the first-mentioned company if the interest of the director may properly be regarded as not being a material interest.

(3.) A director of a company shall not be deemed to be interested or to have been at any time interested in any contract or proposed contract by reason only—

(*a*) in a case where the contract or proposed contract relates to any loan to the company—that he has guaranteed or joined in guaranteeing the re-payment of the loan or any part of the loan; or

(*b*) in a case where the contract or proposed contract has been or will be made with, for the benefit of or on behalf of, a corporation which, by virtue of sub-section (5.) of section six of this Ordinance, is deemed to be related to the company —that he is director of that corporation,

and this sub-section has effect not only for the purposes of this Ordinance but also for the purposes of any other law, but shall not affect the operation of any provision in the articles of the company.

(4.) For the purposes of sub-section (1.) of this section, a general notice given to the directors of a company by a director to the effect that he is an officer or member of a specified company or a member of a specified firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm shall be deemed to be a sufficient declaration of interest in relation to any contract so made, but no such notice is of effect unless it is given at a meeting of the directors or the director takes reasonable steps to insure that it is brought up and read at the next meeting of the directors after it is given.

(5.) A director of a company who holds any office or possesses any property whereby, whether directly or indirectly, duties or interests might be created in conflict with his duties or interests as director shall declare at a meeting of the directors of the company the fact and the nature, character and extent of the conflict.

(6.) The declaration shall be made at the first meeting of the directors held—

(*a*) after he becomes a director; or

(*b*) if he is already a director, after he commenced to hold the office or to possess the property,

as the case requires.

(7.) The secretary of the company shall record every declaration under this section in the minutes of the meeting at which it was made.

(8.) Except as provided in sub-section (3.) of this section, this section is in addition to and not in derogation of the operation of any rule of law or any provision in the articles restricting a director from having any interest in contracts with the company or from holding offices or possessing properties involving duties or interests in conflict with his duties or interests as a director.

Penalty: Five hundred pounds.

As to the duty and liability of officers.
Vic. s. 107.
Tas. s. 93.

124.—(1.) A director shall at all times act honestly and use reasonable diligence in the discharge of the duties of his office.

(2.) An officer of a company shall not make use of any information acquired by virtue of his position as an officer to gain, directly or indirectly, an improper advantage for himself or to cause detriment to the company.

(3.) An officer who commits a breach of this section—

(*a*) is liable to the company for any profit made by him or for any damage suffered by the company as a result of the breach; and

(*b*) is guilty of an offence against this Ordinance.

Penalty: Five hundred pounds.

(4.) This section is in addition to and not in derogation of any other enactment or rule of law relating to the duty or liability of directors or officers of a company.

Loans to directors.
U.K. s. 190.

125.—(1.) A company shall not make a loan to a director of the company or of a company which, by virtue of sub-section (5.) of section six of this Ordinance is deemed to be related to that company, or enter into any guarantee or provide any security in connexion with a loan made to such a director by any other person, but nothing in this section applies—

(*a*) to anything done by a company that is for the time being an exempt proprietary company;

(*b*) to anything done by a subsidiary in relation to such a director, where the director is its holding company;

(*c*) subject to the next succeeding sub-section, to anything done to provide such a director with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company;

(*d*) to anything done to provide such a director who is engaged in the full-time employment of the company or its holding company, as the case may be, with funds to meet expenditure incurred or to be incurred by him in purchasing or otherwise acquiring a home;

(*e*) to any loan made to such a director who is engaged in the full-time employment of the company or its holding company, as the case may be, where the company has, at a general meeting, approved of a scheme for the making of loans to employees of the company and the loan is in accordance with that scheme; or

(*f*) in the case of a company whose ordinary business includes the lending of money or the giving of guarantees in connexion with loans made by other persons—to anything done by the company in the ordinary course of that business.

(2.) Neither paragraph (*c*) nor paragraph (*d*) of the last preceding sub-section authorizes the making of any loan, the entering into of any guarantee or the provision of any security except—

(*a*) with the prior approval of the company given at a general meeting at which the purposes of the expenditure and the amount of the loan or the extent of the guarantee or security, as the case may be, are disclosed; or

(*b*) on condition that, if the approval of the company is not given as aforesaid at or before the next following annual general meeting, the loan shall be repaid or the liability under the guarantee or security shall be discharged, as the case may be, within six months from the conclusion of that meeting.

(3.) Where the approval of the company is not given as required by any such condition, the directors authorizing the making of the loan, the entering into of the guarantee or the provision of the security are jointly and severally liable to indemnify the company against any loss arising therefrom.

(4.) Where a company contravenes the provisions of this section, each director who authorized the making of any loan, the entering into of any guarantee or the providing of any security contrary to those provisions is guilty of an offence against this Ordinance.

Penalty: Two hundred pounds.

(5.) Nothing in this section operates to prevent the company from recovering the amount of any loan or amount for which it becomes liable under any guarantee entered into or in respect of any security given contrary to the provisions of this section.

(6.) Before a person accepts from a proprietary company any guarantee or security referred to in sub-section (1.) of this section, the person may require the company to furnish him with a certificate signed by a director and the secretary of the company certifying that the company is an exempt proprietary company.

(7.) Where the guarantee or security has been accepted by the person after the certificate is so furnished, the person may enforce the guarantee or security against the company notwithstanding that, at the time the certificate was furnished or the guarantee or security was accepted, the company was not an exempt proprietary company.

(8.) A director or secretary of a company who furnishes a person with such a certificate that is false is guilty of an offence against this Ordinance.

Penalty: Two hundred pounds or imprisonment for six months.

Register of directors' share-holdings, &c. U.K. s. 195.

126.—(1.) Every company shall keep a register showing with respect to each director of the company (other than a director that is its holding company) the number, description and amount of any shares in or debentures of the company, or a corporation that is deemed to be related to that company by virtue of sub-section (5.) of section six of this Ordinance, which are held by or in trust for him or of which he has any right to become the holder (whether on payment or not), but the register need not include shares in any corporation which is the wholly-owned subsidiary of another corporation.

(2.) Where, by virtue of the last preceding sub-section, an entry is or should have been made in the register in relation to any director by reason of a transaction entered into after the commencement of this Ordinance and while he is a director, the register shall also show the date of and price or other consideration for the transaction, and, where there is an interval between the agreement for any such transaction and the completion thereof, the date shall be that of the agreement.

(3.) If default is made in complying with sub-section (1.) or sub-section (2.) of this section (not being a default due to the failure of a director to give notice of any matter to the company as required by the next succeeding section or a default due to a director giving incorrect information to the company) or if any

inspection required under this section is refused or any copy required thereunder is not sent within a reasonable time, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Penalty: Five hundred pounds.
Default penalty: Ten pounds.

(4.) The nature and extent of a director's interest or right in or over any shares or debentures recorded in relation to him in the register shall, if he so requires, be indicated in the register.

(5.) The company is not, by virtue of anything done for the purposes of this section, affected with notice of or put upon inquiry as to the rights of any person in relation to any shares or debentures.

(6.) The register shall, subject to this section, be kept at the company's registered office and shall be open to inspection during ordinary business hours by any person acting on behalf of the Attorney-General and, during the period beginning twenty-one days before the date of the company's annual general meeting and ending five days after the date of its conclusion, to the inspection of any member or holder of debentures of the company.

(7.) The Attorney-General may at any time require the company to furnish him with a copy of the register or any part thereof.

(8.) The register shall also be produced at the commencement of the company's annual general meeting and remain open and accessible during the continuance of the meeting to any person attending the meeting.

(9.) If default is made in complying with sub-section (6.) or sub-section (8.) of this section, each officer of the company who is in default is guilty of an offence against this Ordinance.

Penalty: Five hundred pounds.

(10.) For the purposes of this section, a director of a company shall be deemed to hold or to have an interest or a right in or over any shares or debentures if a corporation other than the company holds them or has that interest or right in or over them and—

(*a*) that corporation or its directors are accustomed to act in accordance with his directions or instructions; or

(*b*) he is entitled to exercise or control the exercise of one-third or more of the voting power at any general meeting of that corporation.

(11.) A reference in this section to shares or to debentures shall be read as including a reference to options to take up shares or to options to take up debentures, as the case may be.

General duty to make disclosure. U.K. s. 198.

127.—(1.) A director shall give notice to the company of such matters relating to himself as may be necessary for the purposes of section one hundred and twenty-six, one hundred and thirty-four or one hundred and eighty-four of this Ordinance or of the Tenth Schedule.

(2.) Such a notice shall be in writing and, if it is not given at a meeting of the directors, the director giving it shall take reasonable steps to secure that it is brought up and read at the next meeting of directors after it is given.

Penalty: Five hundred pounds.

Prohibition of tax-free payments to directors. U.K. s. 189.

128.—(1.) A company shall not pay a director remuneration (whether as director or otherwise) free of income tax, or otherwise calculated by reference to or varying with the amount or rate of his income tax, except under a contract which was in force before the commencement of this Ordinance and which provides expressly, and not by reference to the articles, for payment of such remuneration.

(2.) A provision contained in a company's articles, or in a contract (other than a contract referred to in the last preceding sub-section), or in any resolution of a company or of a company's directors, for payment to a director of remuneration free of income tax or otherwise calculated by reference to or varying with the amount or rate of his income tax has effect as if it provided for payment as a gross sum subject to income tax of the net sum for which it actually provides.

(3.) This section does not apply to remuneration due before the commencement of this Ordinance or in respect of a period before the commencement of this Ordinance.

(4.) Where a company contravenes the provisions of this section, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Penalty: Five hundred pounds.

Payments to director for loss of office, &c. U.K. ss. 191–194. N.S.W. s. 130. Vic. s. 108. Qld. s. 158. S.A. s. 168. W.A. s. 155. Tas. s. 94.

129.—(1.) It is not lawful—

(*a*) for a company to make to a director any payment by way of compensation for loss of office as a director of that company or of a subsidiary of that company or as consideration for or in connexion with his retirement from any such office; or

(*b*) for any payment to be made to a director of a company in connexion with the transfer of the whole or any part of the undertaking or property of the company,

unless particulars with respect to the proposed payment (including the amount thereof) have been disclosed to the members of the company and the proposal has been approved by the company in general meeting, and, when any such payment has been unlawfully made, the amount received by the director shall be deemed to have been received by him in trust for the company.

(2.) Where such a payment is to be made to a director in connexion with the transfer to any person, as a result of an offer made to shareholders, of all or any of the shares in the company, the director shall take all reasonable steps to secure that particulars with respect to the proposed payment, including the amount thereof, are included in or sent with any notice of the offer made for their shares which is given to any shareholders, unless those particulars are furnished to the shareholders by virtue of section one hundred and eighty-four of this Ordinance.

(3.) A director who fails to comply with the last preceding sub-section, and a person who has been properly required by a director to include in or send with any notice under this section the particulars required by that sub-section and who fails so to do, is guilty of an offence against this Ordinance and, if the requirements of that sub-section are not complied with, any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any person who has sold his shares as a result of the offer made.

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

(5.) A reference in this section to payments to a director of a company by way of compensation for loss of office or as consideration for or in connexion with his retirement from office shall be read as not including—

(*a*) a payment under an agreement entered into before the first day of October, One thousand nine hundred and fifty-four;

(*b*) a payment under an agreement particulars whereof have been disclosed to and approved by the company in general meeting;

(*c*) a *bona fide* payment by way of damages for breach of contract;

(*d*) a *bona fide* payment by way of pension or lump sum payment in respect of past services, including any superannuation, retiring allowance, superannuation gratuity or similar payment, where the value or amount of the pension or payment (except in so far as it is attributable to contributions made by the director) does not exceed the total emoluments of the director in the three years immediately preceding his retirement or death; or

(*e*) a payment to a director pursuant to an agreement made between the company and him before he became a director of the company as the consideration or part of the consideration for the director agreeing to serve the company as a director.

(6.) This section is in addition to and not in derogation of any rule of law requiring disclosure to be made with respect to any such payments or any other like payment.

Provisions as to assignment of office.
U.K. s. 204. N.S.W. s. 131. Vic. s. 109. Qld. s. 159. S.A. s. 169. W.A. s. 156. Tas. s. 95.

130.—(1.) If, in the case of any public company, provision is made by the articles or by an agreement entered into between any person and the company for empowering a director or manager of the company to assign his office as such to another person, any such assignment of office is, notwithstanding the article or the agreement, of no effect until approved by a special resolution of the company.

(2.) This section shall not be construed so as to prevent the appointment by a director, if authorized by the articles and subject thereto, of an alternate or substitute director to act for or on behalf of the director during his inability for any time to act as director.

Powers to require disclosure of directors' emoluments.
U.K. s. 196. N.S.W. s. 128. Vic. Ninth Schedule. Qld. s. 155. S.A. s. 166.

131.—(1.) If a company is served with a notice sent by or on behalf of—

(*a*) at least ten per centum of the total number of members of the company; or

(*b*) the holders in aggregate of not less than ten per centum in nominal value of the company's issued share capital,

requiring the emoluments of the directors of the company or of a subsidiary to be disclosed, the company shall forthwith—

(*c*) prepare or cause to be prepared an audited statement showing the total emoluments paid to each

of the directors of the company and to each director of a subsidiary, including any amount paid by way of salary for the financial year immediately preceding the service of the notice;

(*d*) lay the statement before the company in general meeting; and

(*e*) forward a copy of the statement to all persons entitled to receive notice of general meetings of the company.

(2.) If default is made in complying with this section, the company and each director of the company is guilty of an offence against this Ordinance.

Penalty: Five hundred pounds.

Secretary.
U.K. ss. 177–179. Vic. s. 110. S.A. s. 116. W.A. s. 100. Tas. s. 96.

132.—(1.) Every company shall have one or more secretaries each of whom shall be a natural person and one of whom shall be a person who ordinarily resides in the Territory.

(2.) The sole director of a proprietary company shall not be or act as secretary for the company.

(3.) The secretary shall be appointed by the directors and shall be present at the registered office of the company by himself or his agent or clerk on the days and at the hours during which the registered office is to be open and accessible to the public.

(4.) Anything required or authorized to be done by or in relation to the secretary may, if the office is vacant or for any other reason the secretary is not capable of acting, be done by or in relation to any assistant or deputy secretary or, if there is no assistant or deputy secretary capable of acting, by or in relation to any officer of the company authorized generally or specially in that behalf by the directors.

(5.) A provision requiring or authorizing a thing to be done by or in relation to a director and the secretary shall not be satisfied by its being done by or in relation to the same person acting both as director and as, or in place of, the secretary.

(6.) Sub-section (1.) of this section does not apply in relation to a company incorporated before the date of commencement of this Ordinance until the expiration of a period of three months after that date.

Provisions indemnifying directors or officers.
U.K. s. 205. N.S.W. s. 132. Vic. s. 111. Qld. s. 160. S.A. s. 170. W.A. s. 157. Tas. s. 97.

133.—(1.) Any provision, whether contained in the articles or in any contract with a company or otherwise, for exempting any officer or auditor of the company from, or indemnifying him against, any liability which by law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company is void.

(2.) Notwithstanding anything in this section, a company may, pursuant to its articles or otherwise, indemnify any officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connexion with any application in relation thereto in which relief is under this Ordinance granted to him by the Court.

Register of directors, managers and secretaries.

U.K. s. 200. N.S.W. s. 125. Vic. s. 112. Qld. s. 154. S.A. s. 165. W.A. s. 150. Tas. s. 98.

134.—(1.) Every company shall keep at its registered office a register of its directors, managers and secretaries.

(2.) The register shall contain with respect to each director his consent in writing to appointment as such (except in the case of an appointment made before the commencement of this Ordinance) and shall specify—

(*a*) in the case of an individual, his present Christian or other name and surname, any former Christian or other name or surname, his usual residential address, and his business occupation, if any;

(*b*) in the case of a corporation—its corporate name and registered or principal office; and

(*c*) particulars of any other directorships of public companies or companies which are subsidiaries of public companies held by the director,

but it is not necessary for the register to contain particulars of directorships held by a director in a company that, by virtue of sub-section (5.) of section six of this Ordinance, is deemed to be related to that company.

(3.) Where a person is a director in one or more subsidiaries of the same holding company, it is sufficient compliance with the provisions of the last preceding sub-section if it is disclosed that the person is the holder of one or more directorships in that group of companies, and the group may be described by the name of the holding company with the addition of the word " Group ".

(4.) The register shall specify with respect to each manager and secretary his full name and address and other occupation, if any.

(5.) The register shall be open to the inspection of any member of the company without charge and of any other person on payment of Five shillings, or such less sum as the company requires, for each inspection.

(6.) The company shall lodge with the Registrar—

(*a*) within one month after incorporation—a return in the prescribed form containing the particulars required to be specified in the register;

(*b*) within one month after a person ceases to be, or becomes, a director of the company—a return in

the prescribed form notifying the Registrar of the change and containing, with respect to each then director of the company, the particulars required to be specified in the register;

(*c*) within one month after a person becomes a manager or secretary of the company—a return in the prescribed form notifying the Registrar of that fact and specifying the full name, address and other occupation, if any, of that person; and

(*d*) within one month after a person ceases to be a manager or secretary of the company—a return in the prescribed form notifying the Registrar of that fact.

(7.) A company registered before the date of commencement of this Ordinance under any corresponding previous law of the Territory shall, within three months after that date, lodge with the Registrar a return in the form prescribed for the purposes of the last preceding sub-section containing such of the matters and particulars required by this section to be specified in the register as are not included in any return of directors, managers or secretaries lodged with the Registrar under such a previous law of the Territory.

(8.) If default is made in complying with any provision of this section, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Default penalty: Ten pounds.

(9.) A certificate of the Registrar in the prescribed form stating that, from any return lodged with the Registrar pursuant to this section, it appears that at any time specified in the certificate any person was a director, manager or secretary of a specified company shall, in all courts and by all persons having power to take evidence for the purposes of this Ordinance, be received as evidence of the facts stated therein and, for the purposes of this sub-section, a person who appears from any return so lodged to be a director, manager or secretary of a company shall be deemed to continue as such until, by a subsequent return so lodged or by a notification of change in the prescribed form so lodged, it appears that he has ceased to be such a director, manager or secretary.

Division 3.—*Meetings and Proceedings.*

Statutory meeting and statutory report.

U.K. s. 130.
N.S.W. s. 93.
Vic. s. 113.
Qld. s. 123.
S.A. s. 132.
W.A. s. 115.
Tas. s. 99.

135.—(1.) Every public company that is a limited company and has a share capital, and every no liability company, shall, within a period of not less than one month and not more than three months after the date on which it is entitled to commence business, hold a general meeting of the members of the company to be called " the statutory meeting ".

(2.) The directors shall, at least seven days before the day on which the meeting is to be held, forward a report, to be called " the statutory report ", to every member of the company.

(3.) The statutory report shall be in the prescribed form, shall be certified by not less than two directors of the company and shall state—

(*a*) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating, in the case of shares partly paid up, the extent to which they are so paid up, and in either case the consideration for which they have been allotted;

(*b*) the total amount of cash received by the company in respect of all the shares allotted and so distinguished;

(*c*) an abstract of the receipts of the company and of the payments made thereout up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts from shares and debentures and other sources, the payments made thereout and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses;

(*d*) the names, addresses and descriptions of the directors, trustees for holders of debentures, if any, auditors, if any, managers, if any, and secretaries of the company; and

(*e*) the particulars of any contract the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

(4.) The statutory report shall, so far as it relates to the shares allotted and to the cash received in respect of such shares and to the receipts and payments on capital account, be examined and reported upon by the auditors, if any.

(5.) The directors shall cause a certified copy of the statutory report and a certified copy of the auditor's report, if any, to be lodged with the Registrar at least seven days before the date of the statutory meeting.

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

(7.) The members present at the meeting shall be at liberty to discuss any matter relating to the formation of the company

or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

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

(9.) The meeting may by ordinary resolution appoint a committee or committees of inquiry, and at any adjourned meeting a special resolution may be passed that the company be wound up if, notwithstanding any other provision of this Ordinance, at least seven days notice of intention to propose the resolution has been given to every member of the company.

(10.) In the event of any default in complying with the provisions of this section, each officer of the company who is in default, and each director of the company who failed to take all reasonable steps to secure compliance with the provisions of this section, is guilty of an offence against this Ordinance.

Default penalty: Ten pounds.

Annual general meeting.

U.K. s. 131. N.S.W. s. 92. Vic. s. 114. Qld. s. 122. S.A. s. 131. W.A. s. 114. Tas. s. 100.

136.—(1.) A general meeting of every company, to be called the " annual general meeting ", shall, in addition to any other meeting, be held at least once in every calendar year and not more than fifteen months after the holding of the last preceding annual general meeting, but, if a company holds its first annual general meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

(2.) The Registrar on the application of the company may, if for any special reason he thinks fit so to do, extend the period of fifteen months or eighteen months referred to in the last preceding sub-section notwithstanding that such period is so extended beyond the calendar year.

(3.) Subject to notice being given to all persons entitled to receive notice of the meeting, a general meeting may be held at any time and the company may resolve that any meeting held or summoned to be held shall be the annual general meeting of the company.

(4.) If default is made in holding an annual general meeting—

(*a*) the company and each officer of the company who is in default is guilty of an offence against this Ordinance; and

(*b*) the Court may, on the application of any member, order a general meeting to be called.

Convening of extra-ordinary general meeting on requisition.
U.K. s. 132.
N.S.W. s. 94.
Vic. s. 115.
Qld. s. 124.
S.A. s. 133.
W.A. s. 116.
Tas. s. 101.

137.—(1.) The directors of a company, notwithstanding anything in its articles, shall, on the requisition of members holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital as at the date of the deposit carries the right of voting at general meetings or, in the case of a company not having a share capital, of members representing not less than one-tenth of the total voting rights of all members having at that date a right to vote at general meetings, forthwith proceed duly to convene an extraordinary general meeting of the company to be held as soon as practicable but in any case not later than two months after the receipt by the company of the requisition.

(2.) The requisition shall state the objects of the meeting and shall be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form each signed by one or more requisitionists.

(3.) If the directors do not, within twenty-one days after the date of the deposit of the requisition, 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, in the same manner as nearly as possible as that in which meetings are to be convened by directors, convene a meeting, but a meeting so convened shall not be held after the expiration of three months from that date.

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

(5.) A meeting at which a special resolution is to be proposed shall be deemed not to be duly convened by the directors if they do not give such notice thereof as is required by this Ordinance in the case of special resolutions.

Calling of meetings.
U.K. ss. 133–134.
N.S.W. s. 95.
Vic. s. 116.
Qld. s. 125.
S.A. s. 134.
W.A. s. 117.
Tas. s. 102.

138.—(1.) So far as the articles do not make other provision in that behalf, two or more members holding not less than one-tenth of the issued share capital, or, if the company has not a share capital, not less than five per centum in number of the members of the company, may call a meeting of the company.

(2.) A meeting of a company or of a class of members, other than a meeting for the passing of a special resolution, shall be called by notice in writing of not less than seven days or such longer period as is provided in the articles.

(3.) A meeting shall, notwithstanding that it is called by notice shorter than is required by the last preceding sub-section, be deemed to be duly called if it is so agreed—

(*a*) in the case of a meeting called as the annual general meeting—by all the members entitled to attend and vote at the meeting; or

(*b*) in the case of any other meeting—by a majority in number of the members having a right to attend and vote at the meeting, being a majority which together holds not less than ninety-five per centum in nominal value of the shares giving a right to attend and vote or, in the case of a company not having a share capital, together represents not less than ninety-five per centum of the total voting rights at that meeting of all the members.

(4.) So far as the articles do not make other provision in that behalf, notice of every meeting shall be served on every member having a right to attend and vote at the meeting in the manner in which notices are required to be served by Table A.

(5.) The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, a member does not invalidate proceedings at a meeting.

Articles as to right to demand a poll.
U.K. s. 137.
Vic. s. 119 (3).
Qld. s. 127 (4).
S.A. s. 136 (4).
W.A. s. 119 (3).
Tas. s. 105 (4).

139.—(1.) A provision contained in a company's articles is void in so far as it would have the effect—

(*a*) of excluding the right to demand a poll at a general meeting on any question or matter other than the election of the chairman of the meeting or the adjournment of the meeting;

(*b*) of making ineffective a demand for a poll on any question or matter, other than the election of the chairman of the meeting or the adjournment of the meeting, that is made—

(i) by not less than five members having the right to vote at the meeting;

(ii) by a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or

(iii) by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right; or

(*c*) 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 at the meeting.

(2.) The instrument appointing a proxy to vote at a meeting of a company shall be deemed to confer authority to demand or join in demanding a poll, and, for the purposes of the last preceding sub-section, a demand by a person as proxy for a member of the company shall be deemed to be the same as a demand by the member.

Quorum, chairman, voting, &c., at meetings.
U.K. s. 139.
N.S.W. ss. 95–96.
Vic. s. 117.
Qld. ss. 125–126.
S.A. ss. 134–135.
W.A. ss. 117–118.
Tas. s. 103.

140.—(1.) So far as the articles do not make other provision in that behalf—

(*a*) in the case of a proprietary company, two members of the company, and in the case of any other company, three members of the company, personally present constitute a quorum;

(*b*) any member elected by the members present at a meeting may be chairman of the meeting; and

(*c*) in the case of a company having a share capital, every member shall have one vote in respect of each share or each Ten pounds of stock held by him, and, in any other case, every member shall have one vote.

(2.) On a poll taken at a meeting, a person entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

(3.) A corporation may, by resolution of its directors or other governing body—

(*a*) if it is a member of a company, authorize such person as it thinks fit to act as its representative either at a particular meeting or at all meetings of the company or of any class of members; or

(*b*) if it is a creditor (including a holder of debentures) of a company, authorize such person as it thinks fit to act as its representative either at a particular meeting or at all meetings of any creditors of the company,

and a person so authorized is, in accordance with his authority and until his authority is revoked by the corporation, entitled to exercise the same powers on behalf of the corporation as the corporation could exercise if it were an individual member, creditor or holder of debentures of the company.

(4.) Where—

(*a*) a person present at a meeting is authorized to act as the representative of a corporation at the meeting by virtue of an authority given by the corporation under the last preceding sub-section; and

(*b*) the person is not otherwise entitled to be present at the meeting,

the corporation shall, for the purposes of sub-section (1.) of this section, be deemed to be personally present at the meeting.

(5.) A certificate under the seal of the corporation is evidence of the appointment or of the revocation of the appointment, as the case may be, of a representative pursuant to the provisions of sub-section (3.) of this section.

(6.) Where a holding company holds the whole of the issued shares of a subsidiary and a minute is signed by a representative of the holding company authorized pursuant to sub-section (3.) of this section stating that any act, matter or thing, or any ordinary or special resolution, required by this Ordinance or by the articles of the subsidiary to be made, performed or passed by or at an ordinary general meeting or an extraordinary general meeting of the subsidiary has been made, performed or passed, that act, matter, thing or resolution shall, for all purposes, be deemed to have been duly made, performed or passed by or at an ordinary general meeting or by or at an extraordinary general meeting, as the case requires, of the subsidiary.

(7.) Where—

(*a*) by or under any provision of this Ordinance, any notice, copy of a resolution or other document relating to any matter is required to be lodged by a company with the Registrar;

(*b*) a minute referred to in the last preceding sub-section is signed by the representative in pursuance of that sub-section; and

(*c*) the minute relates to such a matter,

the company shall, within one month after the signing of the minute, lodge with the Registrar notice in the prescribed form of the signing of the minute and a copy of the minute.

Proxies.
U.K. s. 136.
Vic. s. 117 (5).
Tas. s. 103 (6).

141.—(1.) Subject to the next succeeding sub-section, a member of a company entitled to attend and vote at a meeting of the company, or at a meeting of any class of members of the company, is entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of the member at the meeting and a proxy appointed to attend and vote instead of a member has the same right as the member to speak at the meeting but, unless the articles otherwise provide, a proxy is not entitled to vote except on a poll.

(2.) A member of a proprietary company is not entitled to appoint another person as his proxy under the last preceding sub-section except—

(*a*) in accordance with the articles of the company; or

(*b*) with the leave of the Court.

(3.) In every notice calling a meeting of a public company having a share capital or a meeting of any class of members of such a public company, there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy, or, where that is allowed, one or more proxies, to attend and vote instead of the member, and that a proxy need not also be a member, and, if default is made in complying with this sub-section with respect to any meeting, each officer of the company who is in default is guilty of an offence against this Ordinance.

(4.) A person who authorizes or permits an invitation to appoint as proxy a person or one of a number of persons specified in the invitation to be issued at the company's expense to some only of the members entitled to be sent a notice of the meeting and to vote at the meeting by proxy is guilty of an offence against this Ordinance.

Penalty: One hundred pounds.

(5.) A person is not guilty of an offence under the last preceding sub-section by reason only of the issue to a member at his request of a form of appointment naming the proxy or a list of persons willing to act as proxies if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

Power of Court to order meeting.
U.K. s. 135.
N.S.W. s. 95.
Vic. s. 118.
S.A. s. 134 (2).

142.—(1.) If for any reason it is impracticable to call a meeting in any manner in which meetings may be called or to conduct the meeting in the manner prescribed by the articles or this Ordinance, the Court may, either of its own motion or on the application of any director or of any member who would be entitled to vote at the meeting, order a meeting to be summoned, and the Court may direct that one person present in person or by proxy shall be deemed to constitute the meeting.

(2.) Any meeting called, held and conducted in accordance with any order made pursuant to this section shall, for all purposes, be deemed to be a meeting duly called, held and conducted.

Circulation of members' resolutions, &c. U.K. s. 140.

143.—(1.) Subject to this section, a company shall, on the requisition in writing of such number of members of the company as is specified in the next succeeding sub-section and (unless the company otherwise resolves) at the expense of the requisitionists—

(*a*) give to members 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; and

(*b*) circulate to members entitled to have notice of any general meeting sent to them any statement of not more than one thousand words 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 members necessary for a requisition under the last preceding sub-section is—

(*a*) a number of members representing not less than one-twentieth of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or

(*b*) not less than one hundred members holding shares in the company on which there has been paid up an average sum, per member, of not less than One hundred pounds.

(3.) Notice of a resolution referred to in sub-section (1.) of this section shall be given, and any statement so referred to shall be circulated, to members of the company entitled to have notice of the meeting sent to them by serving a copy of the resolution or statement on each member in any manner permitted for service of notice of the meeting, and notice of the resolution shall be given to any other member 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, and 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, so 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 is not bound under this section to give notice of any resolution or to circulate any statement unless—

(*a*) a copy of the requisition 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 meeting; and

(ii) in the case of any other requisition—not less than one week before the meeting; and

(*b*) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect thereto,

but, if, 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 after the copy has been deposited, the copy though not deposited within the time required by this sub-section shall be deemed to have been properly deposited for the purposes thereof.

(5.) A company is not bound under 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 this section are being abused to secure needless publicity for defamatory matter, and the Court may order the company's costs on an application under this section to be paid in whole or in part by the 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 this section, and, for the purposes of this sub-section, notice shall be deemed to have been so given notwithstanding the accidental omission, in giving it, of one or more members.

(7.) If default is made in complying with this section, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Penalty: Five hundred pounds.

Special resolutions.
U.K. s. 141.
N.S.W. s. 97.
Vic. s. 119.
Qld. s. 127.
S.A. s. 136.
W.A. s. 119.
Tas. s. 105.

144.—(1.) A resolution is a special resolution if it is passed by a majority of not less than three-fourths of such members as being entitled so to do vote in person or, where proxies are allowed, by proxy, at a general meeting of which not less than twenty-one days' notice specifying the intention to propose the resolution as a special resolution has been duly given.

(2.) Notwithstanding the provisions of the last preceding sub-section, if it is so agreed by a majority in number of the members having the right to attend and vote at the meeting, being a majority which together holds not less than ninety-five per centum in nominal value of the shares giving that right or, in the case of a company not having a share capital, together represents not less than ninety-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 twenty-one days' notice has been given.

(3.) At a meeting at which a special resolution is submitted, a declaration of the chairman that the resolution is carried is, unless a poll is demanded, conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4.) At a meeting at which a special resolution is submitted, a poll shall be deemed to be effectively demanded if demanded—

(*a*) by such number of members for the time being entitled under the articles to vote at the meeting as is specified in the articles, but it shall not in any case be necessary for more than five members to make the demand; or

(*b*) if no such provision is made by the articles, by three members so entitled, or by one member or two members so entitled if that member holds, or those two members together hold, not less than ten per centum of the paid-up share capital of the company.

(5.) 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 and to the number of votes to which each member is entitled by this Ordinance or the articles of the company.

(6.) For the purposes of this section, notice of a meeting shall be deemed to be duly given and the meeting shall be deemed to be duly held when the notice is given and the meeting held in manner provided by this Ordinance or by the articles.

(7.) An extraordinary resolution duly and appropriately passed before the commencement of this Ordinance shall for the purposes of this Ordinance be treated as a special resolution.

(8.) Where, in the case of a company incorporated before the commencement of this Ordinance, any matter is required or permitted to be done by extraordinary resolution, that matter may be done by special resolution.

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Resolution requiring special notice.
U.K. s. 142.
Vic. s. 120.
Tas. s. 106.

145.—(1.) Where by this Ordinance special notice is required of a resolution, the resolution is not effective unless notice of the intention to move it has been given to the company not less than twenty-eight days before the meeting at which it is moved.

(2.) The company shall give its members 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, in any manner allowed by the articles, not less than fourteen days before the meeting, but, if after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date twenty-eight days or less after the notice has been given, the notice, although not given to the company within the time required by this section, shall be deemed to be properly given.

Registration and copies of certain resolutions and agreements.
U.K. s. 143.
N.S.W. s. 98.
Vic. s. 121.
Qld. s. 128.
S.A. s. 137.
W.A. s. 121.
Tas. s. 107.

146.—(1.) A printed copy of—

(*a*) every special resolution; and

(*b*) every resolution or agreement which has been agreed to by all the members of some class of shareholders but which, if not so agreed to, would not have been effective for its purpose unless it had been passed by some particular majority or otherwise in some particular manner,

shall, except where otherwise expressly provided by this Ordinance, within one month after the passing or making thereof be lodged by the company with the Registrar together with notice in the prescribed form of the resolution or agreement.

(2.) Where articles have not been registered, a printed copy of every resolution or agreement to which this section applies shall be forwarded to a member at his request on payment of Two shillings and sixpence or such less sum as the company directs.

(3.) If default is made in complying with sub-section (1.) of this section, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Default penalty: Ten pounds.

(4.) If default is made in complying with sub-section (2.) of this section, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Penalty: Five pounds for each copy in respect of which default is made.

Resolutions at adjourned meetings.
U.K. s. 144.
N.S.W. s. 99.
Vic. s. 122.
Qld. s. 129.
S.A. s. 138.
W.A. s. 122.
Tas. s. 108.

147. Where a resolution is passed at an adjourned meeting of a company, of holders of any class of shares or of directors, the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed and not on any earlier date.

Minutes of proceedings.
U.K. s. 145.
N.S.W. s. 100.
Vic. s. 123.
Qld. s. 130.
S.A. s. 139.
W.A. s. 123.
Tas. s. 109.

148.—(1.) A company shall cause—

(*a*) minutes of all proceedings of general meetings and of meetings of its directors and of its managers, if any, to be entered in books kept for that purpose; and

(*b*) those minutes to be signed by the chairman of the meeting at which the proceedings were had or by the chairman of the next succeeding meeting.

(2.) Any minute so entered that purports to be signed as provided in the last preceding sub-section is evidence of the proceedings to which it relates.

(3.) Where minutes have been so entered and signed, then until the contrary is proved—

(*a*) the meeting shall be deemed to have been duly held and convened;

(*b*) all proceedings had at the meeting shall be deemed to have been duly had; and

(*c*) all appointments of officers or liquidators made at the meeting shall be deemed to be valid.

(4.) If default is made in complying with this section, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

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

Inspection of minute books.
U.K. s. 146.
N.S.W. s. 101.
Vic. s. 124.
Qld. s. 131.
S.A. s. 140.
W.A. s. 124.
Tas. s. 110.

149.—(1.) The books containing the minutes of proceedings of any general meeting shall be kept by the company at the registered office or the principal place of business in the Territory of the company, and shall be open to the inspection of any member without charge.

(2.) A member is entitled to be furnished within seven days after he has made a request in writing in that behalf to the company with a copy of any minutes specified in the last preceding sub-section at a charge not exceeding Two shillings for every hundred words thereof.

(3.) If a copy required under this section is not so furnished, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Penalty: Twenty pounds.
Default penalty: Ten pounds.

Division 4.—Register of Members.

Non-application of the Division to mutual life assurance companies.
Vic. s. 125.
Tas. s. 112.

150. Nothing in this Division (other than sub-section (5.) of section one hundred and fifty-three of this Ordinance) applies to a company to which section one hundred and forty of the *Life Insurance Act* 1945-1961 applies so long as the company complies with the provisions of that last-mentioned section.

Register and index of members.
U.K. ss. 110, 118.
N.S.W. ss. 78, 85.
Vic. s. 126.
Qld. ss. 107–108.
S.A. ss. 119–120, 126.
W.A. ss. 103–104, 109.
Tas. s. 113.

151.—(1.) A company shall keep a register of its members and enter therein—

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

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

(*c*) the date at which any person who ceased to be a member during the previous seven years so ceased to be a member; and

(*d*) in the case of a company having a share capital—the date of every allotment of shares to members and the number of shares comprised in each allotment.

(2.) Notwithstanding anything in the last preceding sub-section, where the company has converted any of its shares into stock, the company shall alter the register to show the amount of stock or number of stock units held by each member instead of the number of shares and the particulars relating to shares specified in paragraph (*a*) of that sub-section.

(3.) Notwithstanding anything in sub-section (1.) of this section, a company may keep the names and particulars relating to persons who have ceased to be members of the company separately, and the names and particulars relating to former members need not be supplied to any person who applies for a copy of the register unless he specifically requests the names and particulars of former members.

(4.) The register of members is evidence of any matters inserted therein as required or authorized by this Ordinance.

(5.) A company having more than fifty members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index in convenient form of the

names of the members and shall, within fourteen days after the date on which any alteration is made in the register of members, make any necessary alteration in the index.

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

(7.) If default is made in complying with this section, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Default penalty: Ten pounds.

Where register to be kept.
U.K. s. 110. N.S.W. s. 81. Vic. s. 127. Qld. s. 110. S.A. s. 122. W.A. s. 105. Tas. s. 115.

152.—(1.) The register of members and index, if any, shall be kept at the registered office of the company, but—

(*a*) if the work of making them up is done at another office of the company within the Territory—they may be kept at that other office; or

(*b*) if the company arranges with some other person to make up the register and index, if any, on its behalf—they may be kept at the office of that other person at which the work is done if that office is within the Territory.

(2.) A company shall, within seven days after the register and index, if any, are first kept at a place other than the registered office, lodge with the Registrar notice in the prescribed form of the place where the register and index, if any, are kept and shall, within seven days after any change in the place at which the register and index, if any, are kept, lodge with the Registrar notice in the prescribed form of the change.

(3.) If default is made in complying with this section, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Default penalty: Ten pounds.

Inspection and closing of register.
U.K. s. 115. N.S.W. ss. 81–82. Vic. s. 128. Qld. ss. 110–111. S.A. ss. 122–123. W.A. ss. 105–106. Tas. s. 116.

153.—(1.) A company may, on giving not less than fourteen days' notice by advertisement in a daily newspaper published in the Territory, close the register of members or any class of members for any time or times, but so that no part of the register shall be closed for more than thirty days in the aggregate in any calendar year.

(2.) The register and index shall be open to the inspection of any member without charge and of any other person on payment for each inspection of Five shillings or such less sum as the company requires.

(3.) Any member or other person may request the company to furnish him with a copy of the register, or of any part of the register, so far as it relates to names, addresses, number of shares held and amounts paid on shares, on payment in advance of Two shillings or such lesser sum as the company requires for every hundred words or fractional part thereof required to be copied, and the company shall cause any copy so requested by any person to be sent to that person within a period of twenty-one days commencing on the day next after the day on which the request is received by the company or within such further period as the Registrar considers reasonable in the circumstances.

(4.) If any copy so requested is not sent within the period prescribed by the last preceding sub-section, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Penalty: Twenty pounds.

Default penalty: Ten pounds.

(5.) Any member of a company to which section one hundred and forty of the *Life Insurance Act* 1945-1961 applies is entitled to inspect any register, index or other record of the company that relates to the members of the company, but may make copies of or take extracts from such a register, index or record only in relation to names, addresses and voting entitlements of the members of the company.

Consequences of default by agent.
U.K. s. 114.

154. Where, by virtue of paragraph (*b*) of sub-section (1.) of section one hundred and fifty-two of this Ordinance, the register of members is kept at the office of some person other than the company and, by reason of any default of that other person, the company fails to comply with sub-section (1.) or sub-section (2.) of that section, with the last preceding section or with any requirement of this Ordinance as to the production of the register, that other person is liable to the same penalties as if he were an officer of the company who was in default, and the power of the Court under section three hundred and seventy-three of this Ordinance extends to the making of orders against that other person and his officers and servants.

Power of Court to rectify register.
U.K. s. 116.
N.S.W. s. 83.
Vic. s. 129.
Qld. s. 112.
S.A. s. 124.
W.A. s. 107.
Tas. s. 117.

155.—(1.) If—

(*a*) the name of a person is without sufficient cause entered in or omitted from the register; or

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

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

refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party to the application.

(2.) On an application under the last preceding sub-section, the Court may decide—

(*a*) any question relating to the title of a person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members or between members or alleged members on the one hand and the company on the other hand; and

(*b*) generally any question necessary or expedient to be decided for the rectification of the register.

(3.) Where a company is required by this Ordinance to lodge a return containing a list of its members with the Registrar, the Court when making an order for rectification of the register shall by its order direct a notice of the rectification to be so lodged.

Limitation of liability of trustee, &c., registered as owner of shares.
U.K. s. 117.
N.S.W. s. 84.
Vic. s. 130.
Qld. s. 113.
S.A. s. 125.
W.A. s. 108.
Tas. s. 118.

156.—(1.) A trustee, executor or administrator of the estate of a deceased person who was registered in a register or branch register kept in the Territory as the holder of a share in any corporation may become registered as the holder of that share as trustee, executor or administrator of that estate, and is, in respect of the share, subject to the same liabilities and no more as those to which he would have been subject if the share had remained registered in the name of the deceased person.

(2.) A trustee, executor or administrator of the estate of any deceased person who was equitably entitled to a share in any corporation, being a share registered in a register or branch register kept in the Territory, may, with the consent of the corporation and of the registered holder of that share, become registered as the holder of the share as trustee, executor or administrator of that estate, and is, in respect of the share, subject to the same liabilities and no more as those to which he would have been subject if the share had been registered in the name of the deceased person.

(3.) Shares in a corporation registered in a register or branch register kept in the Territory and held by a trustee in respect of a particular trust may, with the consent of the corporation, be marked in the register or branch register in such a way as to identify them as being held in respect of the trust.

(4.) Except as provided in this section, no notice of any trust, expressed, implied or constructive, shall be entered on the register or be receivable by the Registrar, and no liabilities shall

be affected by anything done in pursuance of sub-section (1.), (2.) or (3.) of this section and the corporation concerned shall not be affected with notice of any trust by anything so done.

(5.) A person who holds shares in a proprietary company as trustee for, or otherwise on behalf of or on account of, a corporation shall—

(*a*) if the shares are so held at the commencement of this Ordinance—within one month after such commencement; or

(*b*) if the shares are acquired and so held after the commencement of this Ordinance—within one month after they are so acquired,

give to the secretary of the proprietary company notice in writing that he so holds the shares.

Branch registers.
U.K. ss. 119-123.
N.S.W. ss. 86-87.
Vic. s. 131.
Qld. ss. 116-117.
S.A. ss. 127-128.
W.A. s. 110.
Tas. s. 119.

157.—(1.) A company having a share capital may cause to be kept in any place outside the Territory a branch register of members which shall be deemed to be part of the company's register of members.

(2.) The company shall lodge with the Registrar notice in the prescribed form of the situation of the office where any branch register is kept, of any change in its situation and, if it is discontinued, of its discontinuance, and any such notice shall be lodged within one month after the opening of the office, of the change or the discontinuance, as the case may be.

(3.) A branch register shall be kept in the same manner as that in which the principal register is by this Ordinance required to be kept except that the advertisement required before the register is closed shall be inserted in a newspaper circulating generally in the district where the branch register is kept.

(4.) The company shall transmit to the office at which its principal register is kept a copy of every entry in its branch register as soon as may be after the entry is made and shall cause to be kept at that office duly entered up from time to time a duplicate of its branch register, and the duplicate register shall, for the purposes of this Ordinance, be deemed to be part of the principal register.

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

(6.) A company may discontinue a branch register and thereupon all entries in that register shall be transferred to some other branch register kept by the company in the same place or to the principal register.

(7.) If, by virtue of the law in force in any State, in any other Territory of the Commonwealth or in any other country, a corporation incorporated under that law keeps in the Australian Capital Territory a branch register of its members, the Attorney-General may, by notice published in the *Gazette*, declare that the provisions of this Ordinance relating to inspection, place of keeping and rectification of registers of members apply, subject to any modifications specified in the notice, to and in relation to any such branch register kept in the Australian Capital Territory as they apply to and in relation to the registers of companies under this Ordinance, and thereupon those provisions apply accordingly.

(8.) If default is made in complying with this section, the company, each officer of the company who is in default and each person who, pursuant to section one hundred and fifty-two of this Ordinance, has arranged to make up the principal register and who is in default is guilty of an offence against this Ordinance.

Default penalty: Ten pounds.

Division 5.—Annual Return.

Annual return by a company having a share capital.
U.K. s. 124.
N.S.W. ss. 88, 90.
Vic. s. 132.
Qld. s. 118.
S.A. s. 129.
W.A. s. 112.
Tas. s. 120.

158.—(1.) A company having a share capital shall make a return containing the particulars referred to in Part I. of the Eighth Schedule and accompanied by such copies of documents as are required to be included in the return in accordance with Part II. of that Schedule and such of the certificates and other particulars prescribed in that Part as are applicable to the company.

(2.) The return shall be in accordance with the form set out in Part II. of the Eighth Schedule, or as near thereto as circumstances admit, and shall be made up to the date of the annual general meeting of the company in the year or a date not later than the fourteenth day after the date of the annual general meeting.

(3.) In the case of a company keeping a branch register, the particulars of the entries in that register shall, so far as they relate to matters which are required to be stated in the return, be included in the return made next after copies of those entries are received at the registered office of the company.

(4.) The annual return, signed by a director, manager or secretary of the company, shall be lodged with the Registrar within one month, or, in the case of a company keeping pursuant to its articles a branch register in any place outside the Commonwealth, within two months, after the annual general meeting.

(5.) If a company fails to comply with this section, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

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

Annual return by company not having a share capital.
U.K. s. 125.
N.S.W. s. 89.
Vic. s. 133.
Qld. s. 119.
S.A. s. 130.
W.A. s. 113.
Tas. s. 121.

159.—(1.) A company not having a share capital shall, within one month after each annual general meeting of the company, lodge with the Registrar a return in the prescribed form containing the particulars referred to in the next succeeding sub-section and made up to the date of the annual general meeting or a date not later than the fourteenth day after the date of the annual general meeting.

(2.) The return shall contain—

(*a*) the address of the registered office of the company;

(*b*) in a case in which the register of members is, under this Ordinance, kept elsewhere than at that office, the address of the place where it is kept;

(*c*) particulars of the total amount of the indebtedness of the company in respect of all charges which are required to be registered with the Registrar;

(*d*) such particulars with respect to the persons who on the day to which the return is made up are the directors, managers or secretaries of the company as are required to be contained in the register of directors, managers and secretaries;

(*e*) the name and address of the auditor of the company; and

(*f*) such other matters relating to the accounts of the company and to the unclaimed moneys held by the company as are prescribed.

(3.) If a company fails to comply with this section, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

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

Exemption of certain companies. Vic. s. 134. Tas. s. 122.

160.—(1.) A public company which—

(*a*) has more than five hundred members;

(*b*) keeps its principal share register at a place within three miles of the office of the Registrar; and

(*c*) provides reasonable accommodation and facilities for persons to inspect and take copies of its list of members and its particulars of shares transferred,

need not comply with such of the provisions of this Division and the Eighth Schedule as relate to the inclusion in the annual return of a list of members if there is included in the annual return a certificate in the prescribed form by the secretary that the company is of a kind to which this sub-section applies.

(2.) The Attorney-General may, by notice published in the *Gazette,* require any company to which the last preceding sub-section applies to comply with all or any of the provisions of this Division or of the Eighth Schedule referred to in that sub-section.

(3.) If default is made in complying with an order made under the last preceding sub-section, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

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

PART VI.—ACCOUNTS AND AUDIT.

Division 1.—Accounts.

Accounts to be kept. U.K. s. 147. N.S.W. s. 102. Vic. s. 136. Qld. s. 132. S.A. s. 141. W.A. s. 125. Tas. s. 130.

161.—(1.) A company, and the directors and managers of a company, shall cause to be kept in the English language such accounting and other records as will sufficiently explain the transactions and financial position of the company and enable true and fair profit and loss accounts and balance-sheets and any documents required to be attached thereto to be prepared from time to time, and shall cause those records to be kept in such manner as to enable them to be conveniently and properly audited.

(2.) The company shall retain the records referred to in the last preceding sub-section for seven years after the completion of the transactions or operations to which they respectively relate.

(3.) The records referred to in sub-section (1.) of this section shall be kept at the registered office of the company, or at such other place as the directors think fit, and shall at all times be open to inspection by the directors.

(4.) If accounting and other records are kept by the company at a place outside the Territory, there shall be sent to and kept at a place in the Territory, and be at all times open to inspection by the directors, such statements and returns with respect to the business dealt with in the records so kept as will enable to be prepared true and fair profit and loss accounts and balance-sheets and any documents required to be attached thereto.

(5.) The Court may, in any particular case, order that the accounting and other records of a company be open to inspection by a registered company auditor acting for a director, but only upon an undertaking in writing being given to the Court that information acquired by the auditor during his inspection will not be disclosed by him except to that director.

(6.) If default is made in complying with any provision of this section, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Penalty: One hundred pounds or imprisonment for three months.

Default penalty: Ten pounds.

Profit and loss account, balance-sheet and directors' report.

U.K. ss. 148–149, 156–157.
N.S.W. ss. 103–104, 110.
Vic. s. 137.
Qld. ss. 133–134.
S.A. ss. 142, 148, 149.
W.A. s. 126.
Tas. ss. 131–132.

162.—(1.) The directors of a company shall, at some date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year at intervals of not more than fifteen months, lay before the company in general meeting a profit and loss account for the period since the preceding account (or, in the case of the first account, since the incorporation of the company) made up to a date not more than six months before the date of the meeting.

(2.) Notwithstanding the provisions of the last preceding sub-section, the Registrar may, on application by the company, if for any special reason he thinks fit so to do, extend the period of eighteen months referred to in that sub-section and, with respect to any year, extend the period of six months referred to in that sub-section, notwithstanding that that period is so extended beyond the calendar year.

(3.) The directors of a company shall cause to be made out, and to be laid before the company in general meeting with the profit and loss account required by sub-section (1.) of this section, a balance-sheet as at the date to which the profit and loss account is made up.

(4.) Where a company is required by the provisions of section one hundred and sixty-five of this Ordinance to appoint an auditor, the profit and loss account and the balance-sheet of the company shall be duly audited before they are laid before the company in general meeting as required by this section.

(5.) The directors of a company shall cause to be attached to every balance-sheet made out pursuant to this section a report signed by or on behalf of the directors with respect to the state of the company's affairs.

(6.) Each report referred to in the last preceding sub-section shall state—

(*a*) whether or not the results of the company's operations in the period covered by the profit and loss account have, in the opinion of the directors, been materially affected by items of an abnormal character;

(*b*) the amount, if any, which has been paid or declared, or which they recommend should be paid, by way of dividend;

(*c*) the amount, if any, which they propose to carry to the reserve fund, general reserve or reserve account shown specifically on the balance-sheet or to a reserve fund, general reserve or reserve account to be shown specifically on a subsequent balance-sheet; and

(*d*) where the directors are of the opinion that any current assets would not realize at least the value at which they are shown in the accounts of the company, their opinion as to the amount that those current assets might reasonably be expected to realize in the ordinary course of business of the company.

(7.) The reference in the last preceding sub-section to the expression " items of an abnormal character " shall, without limiting the generality of that expression, be read as including—

(*a*) any change in accounting principles adopted since the last report;

(*b*) any transfers to or from reserves or provisions;

(*c*) any writing off of substantial amounts of bad debts;

(*d*) any substantial increase or decrease in the value of trading stock owing to a change in the basis of valuation of the whole or any part of the trading stock;

(*e*) any item of an unusual nature or value which appears in the accounts; and

(*f*) any absence from the accounts of any material item usually included therein.

(8.) Where an option has been granted during the period covered by the profit and loss account to take up unissued shares of a company, the report required by sub-section (5.) of this section shall state—

(*a*) the name of the person to whom the option has been granted;

(*b*) the number and class of shares in respect of which the option has been granted;

(*c*) the date of expiration of the option;

(*d*) the basis upon which the option may be exercised; and

(*e*) whether the person to whom the option has been granted has any right to participate by virtue of the option in any share issue of any other company.

(9.) Each report required by sub-section (5.) of this section shall specify—

(*a*) particulars of shares issued during the period to which the report relates by virtue of the exercise of options to take up unissued shares of the company, whether granted before or during that period; and

(*b*) the number and class of unissued shares of the company under option as at the end of that period, the price, or method of fixing the price, of issue of those shares, the date of expiration of the option and the rights, if any, of the persons to whom the options have been granted to participate by virtue of the options in any share issue of any other company.

(10.) Paragraph (*a*) of sub-section (8.) of this section does not apply in a case where the option to take up shares of the company has been conferred generally on all the holders of a class of shares or debentures of the company.

(11.) Every balance-sheet referred to in sub-section (3.) of this section shall give a true and fair view of the state of affairs of the company as at the end of the period to which it relates, and every profit and loss account referred to in sub-section (1.) of this section shall give a true and fair view of the profit or loss of the company for the period of accounting as shown in the accounting and other records of the company, and, without affecting the generality of the foregoing, every such balance-sheet and profit and loss account shall comply with the requirements of the Ninth Schedule so far as they are applicable thereto, but, where, under the *Banking Act* 1959, a company is required to prepare a balance-sheet and profit and loss account annually, a balance-sheet and a profit and loss account each of which complies with that Act shall be deemed to comply with the

provisions of this Ordinance relating to the form and content of balance-sheets and profit and loss accounts, and the provisions of sub-section (5.) of this section do not apply to any such balance-sheet.

(12.) Each balance-sheet and profit and loss account of a company shall be accompanied by a statement signed on behalf of the directors by two directors of the company, or, in the case of a proprietary company having one director only, by that director, stating that in their or his opinion—

(*a*) the profit and loss account is drawn up so as to give a true and fair view of the results of the business of the company for the period covered by the account; and

(*b*) the balance-sheet is drawn up so as to exhibit a true and fair view of the state of affairs of the company as at the end of that period.

(13.) Each balance-sheet and profit and loss account laid before a company in general meeting shall be accompanied by a statutory declaration by the secretary of the company verifying to the best of his knowledge and belief the correctness of the balance-sheet and profit and loss account.

(14.) Any document (other than a balance-sheet prepared in accordance with this Ordinance) or advertisement published, issued or circulated by or on behalf of a company (other than a banking corporation) shall not contain any direct or indirect representation that the company has any reserve unless the representation is accompanied—

(*a*) if the reserve is invested outside the business of the company—by a statement showing the manner in which and the security upon which it is invested; or

(*b*) if the reserve is being used in the business of the company—by a statement to the effect that the reserve is being so used.

(15.) This section does not apply to a company registered under the *Life Insurance Act* 1945-1961, but such a company shall lodge with the Registrar a copy of every balance-sheet, revenue account and profit and loss account which it is required to lodge under that Act within nine months after the expiration of the period in respect of which the balance-sheet, revenue account or profit and loss account was prepared.

(16.) The reference in sub-section (1.) of this section to the incorporation of a company shall, in relation to a company which was incorporated before the date of commencement of this Ordinance and which had held an annual general meeting before that date, be read as a reference to the last annual general meeting of the company so held.

Penalty.
U.K. s. 147 (4).
N.S.W. s. 102.
Vic. s. 138.
Qld. s. 133 (3).
S.A. s. 142 (3).
W.A. s. 126.
Tas. s. 134.

163.—(1.) If a director of a company fails to take all reasonable steps to secure compliance by the company with the foregoing provisions of this Division or has, by his own wilful act, been the cause of any default by the company thereunder, he is guilty of an offence against this Ordinance.

Penalty: Two hundred pounds or imprisonment for six months.

(2.) In any proceedings against a person for failure to take reasonable steps to secure compliance by a company with the foregoing provisions of this Division, it is a defence to prove that he had reasonable ground to believe, and did believe, that a competent and reliable person was charged with the duty of seeing that those provisions were complied with and was in a position to discharge that duty.

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

Members of company entitled to balance-sheet, &c.
U.K. s. 158.
N.S.W. s. 111.
Vic. s. 139.
Qld. s. 140.
S.A. s. 150.
W.A. s. 134.
Tas. s. 135.

164.—(1.) A copy of every profit and loss account and balance-sheet (including every document required by law to be attached thereto) which is to be laid before a company in general meeting (accompanied, if the company is required by this Ordinance to appoint an auditor, by a copy of the auditor's report thereon) shall, not less than seven days before the date of the meeting, be sent to all persons entitled to receive notice of general meetings of the company.

(2.) Any member of a company, whether he is or is not entitled to have sent to him copies of the profit and loss accounts and balance-sheets, to whom copies have not been sent and any holder of debentures shall, on a request being made by him to the company, be furnished by the company without charge with a copy of the last profit and loss account and balance-sheet of the company (including every document required by this Ordinance to be attached thereto) together with a copy of the auditor's report, if any, thereon.

(3.) If default is made in complying with sub-section (1.) or (2.) of this section by reason of a failure to send a copy of a document to a person or to furnish a person with a copy of a document, the company and each officer of the company who is in default is guilty of an offence against this Ordinance unless it is proved that that person had been furnished with a copy of the document before the commission of the offence.

Penalty: Twenty pounds.

Default penalty: Ten pounds.

(4.) This section does not apply in relation to a company to which section one hundred and forty of the *Life Insurance Act* 1945-1961 applies.

Division 2.—Audit.

Appointment and remuneration of auditors.

U.K. ss. 159–161. N.S.W. s. 113. Vic. s. 141. Qld. ss. 142–143. S.A. s. 153. W.A. s. 137. Tas. s. 137.

165.—(1.) At any time before the first annual general meeting of a company, the directors of the company may appoint, or (if the directors do not make an appointment) the company at a general meeting may appoint, a person or persons to be the auditor or auditors of the company, and any auditor so appointed shall, subject to this section, hold office until the first annual general meeting.

(2.) A company shall, at each annual general meeting of the company, appoint a person or persons to be the auditor or auditors of the company, and any auditors so appointed shall, subject to this section, hold office until the next annual general meeting of the company.

(3.) Subject to sub-sections (7.) and (8.) of this section, the directors of a company may fill any casual vacancy in the office of auditor of the company but, while such a vacancy continues, the surviving or continuing auditor or auditors, if any, may act.

(4.) An auditor of a company may be removed from office by resolution of the company at a general meeting of which special notice has been given, but not otherwise.

(5.) Where special notice of a resolution to remove an auditor is received by a company—

(*a*) it shall forthwith send a copy of the notice to the auditor concerned and to the Board; and

(*b*) the auditor may, within seven days after the receipt by him of the copy of the notice, make representations in writing to the company (not exceeding a reasonable length) and request that, prior to the meeting at which the resolution is to be considered, a copy of the representations be sent by the company to every member of the company to whom notice of the meeting is sent.

(6.) Unless the Board on the application of the company otherwise orders, the company shall send a copy of the representations as so requested and the auditor may (without prejudice to his right to be heard orally) require that the representations be read out at the meeting.

(7.) Where an auditor of a company is removed from office in pursuance of sub-section (4.) of this section at a general meeting of the company—

(*a*) the company may, at the meeting (by a resolution passed by a majority of not less than three-fourths of such members of the company as being entitled

so to do vote in person or, where proxies are allowed, by proxy) forthwith appoint another person nominated at the meeting as auditor; or

(*b*) the meeting may be adjourned to a date not earlier than twenty days and not later than thirty days after the meeting and the company may, by ordinary resolution, appoint another person as auditor, being a person notice of whose nomination as auditor has, at least ten days before the adjourned meeting, been received by the company.

(8.) A company shall, forthwith after the removal of an auditor from office in pursuance of sub-section (4.) of this section, give notice in writing of the removal to the Board and, if the company does not appoint another auditor under the last preceding sub-section, the Board shall appoint an auditor.

(9.) An auditor appointed in pursuance of sub-section (7.) or (8.) of this section shall, subject to this section, hold office until the next annual general meeting of the company.

(10.) Notwithstanding the provisions of this section, it is not necessary for an exempt proprietary company to appoint an auditor at a particular annual general meeting of the company if—

(*a*) all the members of the company have agreed at or before the meeting that it is not necessary for the company to appoint an auditor at that meeting; and

(*b*) the secretary of the company has recorded a minute to that effect in the book containing the minutes of proceedings of general meetings of the company.

(11.) If a company required by this section to appoint an auditor or auditors does not do so, the Board may, on the application in writing of any member of the company, make the appointment.

(12.) A person is not capable of being appointed auditor of a company at an annual general meeting unless he held office as an auditor of the company immediately before the meeting or notice of his nomination as auditor was given to the company by a member of the company not less than twenty-one days before the meeting.

(13.) Where notice of nomination of a person as an auditor of a company is received by the company, whether for appointment at an adjourned meeting under sub-section (7.) of this section or at an annual general meeting, the company shall, not

later than seven days before the adjourned meeting or the annual general meeting, send a copy of the notice to the person nominated, to each auditor, if any, of the company and to each person entitled to receive notice of general meetings of the company.

(14.) If, after notice of nomination of a person as an auditor of a company has been given to the company, the annual general meeting of the company is called for a date twenty-one days or less after the notice has been given, sub-section (12.) of this section does not apply in relation to the person and, if the annual general meeting is called for a date not more than seven days after the notice has been given and a copy of the notice is, at the time notice of the meeting is given, sent to each person to whom, under the last preceding sub-section, it is required to be sent, the company shall be deemed to have complied with that sub-section in relation to the notice.

(15.) The fees and expenses of an auditor of a company—

(*a*) in the case of an auditor appointed by the company at a general meeting—shall be fixed by the company in general meeting or, if so authorized by the members at the last preceding annual general meeting, by the directors; and

(*b*) in the case of an auditor appointed by the directors or by the Board—may be fixed by the directors or by the Board, as the case may be, and, if not so fixed, shall be fixed as provided in paragraph (*a*) of this sub-section as if the auditor had been appointed by the company.

166.—(1.) If a company is served with a notice sent by or on behalf of— **Auditors' remuneration.** Vic. Ninth Schedule.

(*a*) at least ten per centum of the total number of members of the company; or

(*b*) the holders in aggregate of not less than ten per centum in nominal value of the company's issued share capital,

requiring particulars of all emoluments paid to or receivable by the auditor of the company, or any person who is a partner, employer or employee of the auditor, by or from the company or any subsidiary in respect of services other than auditing services rendered to the company, the company shall forthwith—

(*c*) prepare or cause to be prepared a statement showing particulars of all emoluments paid to the auditor or other person and of the services in respect of which the payments have been made for the financial year immediately preceding the service of such notice;

(*d*) forward a copy of the statement to all persons entitled to receive notice of general meetings of the company; and

(*e*) lay such statement before the company in general meeting.

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

Penalty: Five hundred pounds.

Powers and duties of auditors as to reports on accounts.
U.K. s. 62.
N.S.W. s. 115.
Vic. s. 142.
Qld. s. 144.
S.A. s. 155.
W.A. s. 139.
Tas. s. 139

167.—(1.) An auditor of a company shall report to the members as to every balance-sheet and profit and loss account laid before the company in general meeting during his tenure of office and shall state in the report whether, in his opinion—

(*a*) the balance-sheet and profit and loss account are properly drawn up in accordance with the provisions of this Ordinance and so as to give a true and fair view of the state of the company's affairs; and

(*b*) the accounting and other records (including registers) examined by him are properly kept in accordance with the provisions of this Ordinance.

(2.) An auditor shall, where applicable, state in his report—

(*a*) that he has not obtained all the information and explanations that he required;

(*b*) that, in his opinion, proper accounting and other records (including registers) have not been kept by the company;

(*c*) that, in his opinion, the returns submitted from branches not visited by the auditor are inadequate;

(*d*) that, in his opinion, according to the best of his information and the explanations given to him and as shown by the accounting and other records of the company, the profit and loss account is not in agreement with the company's accounting and other records or is not properly drawn up so as to give a true and fair view of the results of the business of the company for the period of accounting;

(*e*) that, in his opinion, according to the best of his information and the explanations given to him and as shown by the accounting and other records of the company, the balance sheet is not in agreement with the company's accounting and other

records or is not properly drawn up so as to give a true and fair view of the state of the company's affairs as at the end of the period of accounting; or

(*f*) that, in his opinion, according to the best of his information and the explanations given to him, the accounting and other records (including registers) the balance-sheet and the profit and loss account do not give the information required by this Ordinance,

and shall give particulars of any failure or shortcoming in respect of any of the matters referred to in this sub-section.

(3.) An auditor has a right of access at all times to the accounting and other records, including registers, of the company and is entitled to require from the officers of the company such information and explanation as he desires for the audit.

(4.) The auditor's report shall be attached to the balance-sheet and the profit and loss account and shall, if any member so requires, be read before the company in general meeting and shall be open to inspection by any member.

(5.) An auditor is entitled to attend any general meeting of the company and to receive all notices of and other communications relating to any general meeting which any member is entitled to receive and to be heard at any general meeting which he attends on any part of the business of the meeting which concerns him as auditor.

(6.) An officer of a company who refuses or fails without lawful justification to allow an auditor access to any accounting and other records, including registers, of the company in his custody or power, or to give any information possessed by him as and when required, or who otherwise hinders, obstructs or delays an auditor in the performance of his duties or the exercise of his powers, is guilty of an offence against this Ordinance.

Default penalty: Ten pounds.

Division 3.—*Inspection.*

Application and interpretation.

N.S.W. s. 118 (4). Vic. s. 143. W.A. s. 142 (4). Tas. s. 140.

168.—(1.) This Division does not authorize an investigation into the affairs of a company in relation to any business of the company that is life insurance business for the purposes of the *Life Insurance Act* 1945-1961.

(2.) In this Division, " officer or agent ", in relation to a corporation, includes—

(*a*) a director, banker, solicitor or auditor of the corporation;

(*b*) a person who at any time—

(i) has been a person referred to in the last preceding paragraph; or

(ii) has been otherwise employed or appointed by the corporation;

(*c*) a person who—

(i) has in his possession any property of the corporation;

(ii) is indebted to the corporation; or

(iii) is capable of giving information concerning the promotion, formation, trading, dealings, affairs or property of the corporation; and

(*d*) where there are reasonable grounds for suspecting or believing that a person is a person referred to in the last preceding paragraph—that person.

Investigation of affairs of company by inspectors at direction of Attorney-General.

U.K. s. 165. N.S.W. s. 116. Vic. s. 144. Qld. ss. 145–146. S.A. s. 156. W.A. ss. 140, 143. Tas. s. 141.

169.—(1.) The Attorney-General may appoint one or more inspectors to investigate the affairs of a company or such aspects of the affairs of a company as are specified in the instrument of appointment and to report thereon in such manner as the Attorney-General directs—

(*a*) in the case of a company (not being a banking corporation) having a share capital—on the application of not less than two hundred members or of members holding not less than one-tenth of the shares issued or on the application of holders of debentures holding not less than one-fifth in nominal value of debentures issued;

(*b*) in the case of a company not having a share capital—on the application of not less than one-fifth in number of the persons on the company's register of members; or

(*c*) in the case of a banking corporation having a share capital—on the application of members holding not less than one-third of the shares issued.

(2.) The application shall be supported by such evidence as the Attorney-General requires as to the reasons for the application and the motives of the applicants in requiring the investigation, and the Attorney-General may, before appointing an inspector, require the applicants to give security to such amount as he thinks fit for payment of the costs of the investigation.

(3.) An inspector may, and if so directed by the Attorney-General shall, make interim reports to the Attorney-General and on the conclusion of the investigation, the inspector shall

report his opinion on or in relation to the affairs that he has been appointed to investigate, together with the facts upon which his opinion is based, to the Attorney-General, and the Attorney-General shall cause a copy of the report to be forwarded to the registered office of the company and, if the applicants so request, to them.

(4.) The Attorney-General may, if he is of the opinion that it is necessary in the public interest so to do, cause the report to be printed and published.

(5.) If, from the report, it appears to the Attorney-General that a person has been guilty of an offence in relation to the company and he considers that the case is one in which a prosecution ought to be instituted, he shall cause a prosecution to be instituted accordingly and all officers and agents of the company (other than the defendant in the proceedings) shall, on being required by the Attorney-General so to do, give all assistance in connexion with the prosecution which they are reasonably able to give.

(6.) If, from any report under this section, it appears to the Attorney-General that proceedings ought in the public interest to be brought by any company dealt with by the report for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connexion with the promotion or formation of that company or in the management of its affairs or for the recovery of any property of the company which has been misapplied or wrongfully retained, he may himself bring proceedings for that purpose in the name of the company.

170.—(1.) A company may, by special resolution, appoint one or more inspectors to investigate its affairs.

Investigation by resolution of company.

U.K. s. 164. N.S.W. s. 118. Vic. s. 145. Qld. s. 147. S.A. s. 158. W.A. s. 142. Tas. s. 142.

(2.) On the conclusion of the investigation, the inspector shall report his opinion in such manner and to such persons as the company in general meeting directs.

171.—(1.) If an inspector appointed to investigate the affairs of a company thinks it necessary for the purposes of the investigation to investigate also the affairs of any other corporation which is or has at any relevant time been deemed to be or to have been related to that company by virtue of subsection (5.) of section six of this Ordinance, he has power so to do and shall report on the affairs of the other corporation so far as he thinks the results of the investigation thereof are relevant to the investigation of the affairs of the company.

Procedure and costs of inquiry.

U.K. ss. 166–171. N.S.W. s. 116. Vic. s. 146. Qld. ss. 145–146. S.A. ss. 156–157. W.A. s. 140. Tas. s. 143.

(2.) An officer or agent of a corporation the affairs of which are being investigated pursuant to this Division shall, if required by an inspector appointed under this Division, produce to the inspector all books and documents in his custody or power and shall give to the inspector all assistance in connexion with the investigation which he is reasonably able to give.

(3.) An inspector may, by notice in the prescribed form, require an officer or agent of any corporation whose affairs are being investigated pursuant to this Division to appear for examination on oath or affirmation (which he is hereby authorized to administer) in relation to its business, and the notice may require the production of all books and documents in the custody or under the control of the officer or agent.

(4.) If an officer or agent of a corporation the affairs of which are being investigated pursuant to this Division fails to comply with the requirements of a notice issued under the last preceding sub-section or fails or refuses to answer any question which is put to him by an inspector with respect to the affairs of the corporation, the inspector may certify the failure or refusal under his hand to the Court, and the Court may thereupon inquire into the case and, after hearing any witnesses against or on behalf of the alleged offender and any statement offered in defence, punish the offender in like manner as if he had been guilty of contempt of the Court.

(5.) A person who is or has formerly been an officer or agent of a corporation the affairs of which are being investigated pursuant to this Division is not entitled to refuse to answer any question which is relevant or material to the investigation on the ground that his answer might tend to incriminate him but, if he claims that the answer to any question might incriminate him and but for this sub-section he would have been entitled to refuse to answer the question, the answer to the question shall not be used in any subsequent criminal proceedings except in the case of a charge against him for perjury committed by him in answer to that question.

(6.) Except as expressly provided in the last preceding sub-section a person is entitled to refuse to answer a question on the ground that the answer might tend to incriminate him.

(7.) An inspector may cause notes of any examination under this Division to be recorded and reduced to writing and to be read to or by and signed by the person examined and any such signed notes may, except in the case of an answer which that person would not have been required to give but for the provisions of sub-section (5.) of this section, thereafter be used in evidence in any legal proceedings against that person.

(8.) The expenses of and incidental to an investigation pursuant to this Division (including the costs of any proceedings brought by the Attorney-General in the name of the company) shall be paid—

(*a*) where, as a result of the investigation, a prosecution is instituted—by the Commonwealth; or

(*b*) in any other case—by the company investigated or, if the Attorney-General so directs, by the applicants or in part by the company and in part by the applicants.

(9.) Notwithstanding the provisions of the last preceding sub-section—

(*a*) if the company fails to pay the whole or any part of the sum which it is liable to pay under that sub-section, the applicants shall make good the deficiency up to the amount by which the security given by them under this Division exceeds the amount, if any, which they have, under that sub-section, been directed by the Attorney-General to pay; and

(*b*) any balance of the expenses not paid either by the company or the applicants shall be paid by the Commonwealth.

(10.) A copy of the report of an inspector appointed under this Division certified as correct by the Attorney-General is admissible in any legal proceeding as evidence of the opinion of the inspector in relation to any matter contained in the report and of the facts upon which his opinion is based.

Division 4.—Special Investigations.

Application and interpretation. Vic. s. 147. Qld. s. 145 (8). W.A. s. 143. Tas. s. 144.

172.—(1.) In this Division—

"company to which this Division applies" means a company or foreign company declared by the Attorney-General in pursuance of this section to be a company to which this Division applies;

"officer or agent" has the same meaning as in section one hundred and sixty-eight of this Ordinance.

(2.) Subject to the next succeeding sub-section, the Attorney-General may, by notice published in the *Gazette*, declare that a company or foreign company is a company to which this Division applies.

(3.) A declaration shall not be made in respect of a company or foreign company in pursuance of this section unless—

(*a*) the Attorney-General is satisfied that a *prima facie* case has been established that, for the protection of the public, the holders of interests

to which the provisions of Division 5 of Part IV. apply or the shareholders or creditors of the company or foreign company, it is desirable that the affairs of the company or foreign company should be investigated under this Division; or

(*b*) in the case of a foreign company—the appropriate authority of a State or of another Territory of the Commonwealth, or of a country other than Australia, has requested that a declaration be made in pursuance of this section in respect of the company.

Appointment of inspectors. Vic. s. 148. Qld. s. 145 (8). S.A. s. 158A. Tas. s. 145.

173.—(1.) The Attorney-General may appoint one or more inspectors to investigate the affairs of a company to which this Division applies and to report thereon in such manner as the Attorney-General directs.

(2.) An appointment under this section has, in all respects, the same force and effect as an appointment of an inspector or inspectors pursuant to Division 3 of this Part and, for the purposes of this Division, the provisions of and powers conferred by that Division extend and apply, with such adaptations as are necessary, accordingly except that the expenses of and incidental to the investigation shall be defrayed by the Commonwealth.

(3.) Notwithstanding the provisions of the last preceding sub-section, the Attorney-General may direct that the expenses or any portion thereof shall be paid by the company or any person who requested that the appointment be made and, if the Attorney-General so directs, any balance of the expenses shall be defrayed by the Commonwealth.

(4.) An inspector may employ such persons as he considers necessary and in writing authorize any such person to do anything he could himself do, except to examine on oath or affirmation.

(5.) An officer or agent of a corporation who—

(*a*) refuses or fails to produce any book or document to any person who produces a written authority of an inspector given pursuant to the last preceding sub-section; or

(*b*) refuses or fails to answer any question lawfully put to him by any such person,

is liable to be dealt with in the same manner as is provided in sub-section (4.) of section one hundred and seventy-one of this Ordinance for refusing or failing to comply with the request of an inspector.

Suspension of actions and proceedings by company, &c. Vic. s. 149. Tas. s. 146

174.—(1.) On and after the appointment of an inspector in respect of a company to which this Division applies until the expiration of three months after the inspector has presented his final report to the Attorney-General, no action or proceeding shall, without the consent of the Attorney-General, be commenced or proceeded with in any court—

(*a*) by the company upon or in respect of any contract, bill of exchange or promissory note; or

(*b*) by the holder or any other person in respect of any bill of exchange or promissory note made, drawn or accepted by or issued, transferred, negotiated or endorsed by or to the company unless the holder or other person—

(i) at the time of the negotiation, transfer, issue, endorsement or delivery thereof to him gave therefor adequate pecuniary consideration; and

(ii) was not at the time of the negotiation, transfer, issue, endorsement or delivery thereof to him or at any time within three years before that time a shareholder, officer, agent or employee of the company or the wife or husband of any shareholder, officer, agent or employee of the company.

(2.) Any action or proceeding which is commenced or proceeded with in contravention of this section is void and of no effect.

Winding up of company. Vic. s. 150. Qld. s. 145 (8). Tas. s. 147.

175.—(1.) Application to the Court—

(*a*) in the case of a company—for the winding up of the company; or

(*b*) in the case of a foreign company—for the winding up, so far as the assets of the company within the Territory are concerned, of the affairs of the company,

may be made on petition of the Attorney-General at any time after a report has been made in respect of the company by an inspector under this Division, whereupon the provisions of this Ordinance shall, with such adaptations as are necessary, apply as if—

(*c*) in the case of a company—a winding up petition had been duly presented to the Court by the company; and

(*d*) in the case of a foreign company—a petition for an order for the affairs of the company, so far as assets within the Territory are concerned, to be

wound up within the Territory had been duly presented to the Court by a creditor or contributory of the company upon the liquidation of the company in the place in which it is incorporated.

(2.) Where in the case of a foreign company, on any petition under the last preceding sub-section, an order is made for the affairs of the company, so far as assets within the Territory are concerned, to be wound up within the Territory, the company shall not carry on business or establish or keep a place of business within the Territory.

Penalties. Vic. s. 151. Tas. s. 148.

176.—(1.) A person who, with intent to defeat the purposes of this Division or to delay or obstruct the carrying out of an investigation under this Division—

(*a*) destroys or alters any book, document or record of or relating to a company to which this Division applies; or

(*b*) sends or attempts to send, or conspires with any other person to send, out of the Territory any such book, document or record or any property of any description belonging to or in the disposition or under the control of such a company,

is guilty of an offence against this Ordinance.

Penalty: Five hundred pounds or imprisonment for two years.

(2.) If, in a prosecution for an offence against this section, it is proved that the person charged with the offence—

(*a*) has destroyed or altered any book, document or record of or relating to the company; or

(*b*) has sent or attempted to send, or conspired to send, out of the Territory any book, document or record or any property of any description belonging to or in the disposition or under the control of the company,

the onus of proving that in so doing he had not acted with intent to defeat the purposes of this Division or to delay or obstruct the carrying out of an investigation under this Division lies on him.

Appointment and powers of inspectors to investigate ownership of company. U.K. s. 172.

177.—(1.) Where it appears to the Attorney-General that there is good reason so to do, he may appoint one or more inspectors to investigate and report on the membership of any company (whether or not it is a company to which this Division applies) and otherwise with respect to the company for the purpose of determining the true persons who are or have been

financially interested in the success or failure (real or apparent) of the company or able to control or materially to influence the policy of the company.

(2.) The appointment of an inspector under this section may define the scope of his investigation, either as respects the matters or the period to which it is to extend or otherwise, and, in particular, may limit the investigation to matters connected with particular shares or debentures.

(3.) Where an application for an investigation under this section with respect to particular shares or debentures of a company is made to the Attorney-General by members of the company and the number of applicants or the amount of the shares held by them is not less than that required for an application for the appointment of an inspector under Division 3 of this Part, the Attorney-General shall appoint an inspector to conduct the investigation unless he is satisfied that the application is vexatious and the inspector's appointment shall not exclude from the scope of his investigation any matter which the application seeks to have included therein, except in so far as the Attorney-General is satisfied that it is unreasonable for that matter to be investigated.

(4.) Subject to the terms of an inspector's appointment, his powers extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of his investigation.

(5.) For the purposes of any investigation under this section, the provisions of Division 3 of this Part apply, with the necessary modifications, to the affairs of the company or to those of any other corporation, but so that—

(*a*) that Division applies in relation to all persons who are or have been, or whom the inspector has reasonable cause to believe to be or to have been, financially interested in the success or failure or the apparent success or failure of the company or any other corporation the membership of which is investigated with that of the company, or able to control or materially to influence the policy thereof, including persons concerned only on behalf of others, as it applied in relation to officers and agents of the company or of the other corporation, as the case may be; and

(*b*) the Attorney-General is not bound to furnish the company or any other person with a copy of any report by an inspector appointed under this section, or with a complete copy thereof, if he is of opinion that there is good reason for not divulging the contents of the reports or of parts thereof, but the Attorney-General shall cause to be kept by the Registrar a copy of the report or, as the case may be, the parts of the report with respect to which he is not of that opinion.

(6.) The expenses of an investigation under this section shall be defrayed by the Commonwealth.

Power to require information as to persons interested in shares or debentures.
U.K. s. 173.

178.—(1.) Where it appears to the Attorney-General that there is good reason to investigate the ownership of any shares in or debentures of a company (whether or not it is a company to which this Division applies) and that it is unnecessary to appoint an inspector for the purpose and the Attorney-General has reasonable cause to believe that a person—

(*a*) is or has been interested in those shares or debentures; or

(*b*) is acting or has acted in relation to those shares or debentures as the solicitor or agent of some person interested therein,

the Attorney-General may require that person to give to the Attorney-General any information which the first-mentioned person has or can reasonably be expected to obtain as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares or debentures.

(2.) For the purposes of this section, a person shall be deemed to have an interest in a share or debenture if he has a right to acquire or dispose of the share or debenture or any interest therein or to vote in respect thereof, or if his consent is necessary for the exercise of any of the rights of other persons interested therein, or if other persons interested therein can be required, or are accustomed to, exercise their rights in accordance with his instructions.

(3.) A person who fails to give any information required of him under this section or who, in giving any such information, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, is guilty of an offence against this Ordinance.

Penalty: Five hundred pounds or imprisonment for six months, or both.

179.—(1.) Where, in connexion with an investigation under either of the last two preceding sections, it appears to the Attorney-General that there is difficulty in finding out the relevant facts about any shares (whether issued or to be issued) and that the difficulty is due wholly or mainly to the unwillingness of the persons concerned or any of them to assist the investigation as required by this Ordinance, the Attorney-General may, by notice published in the *Gazette*, direct that the shares are until further order subject to the following restrictions:—

Power to impose restrictions on shares or debentures. U.K. s. 174.

(*a*) that any transfer of those shares or, in the case of unissued shares, any transfer of the right to be issued therewith and any issue thereof, is void;

(*b*) that no voting rights are exercisable in respect of those shares;

(*c*) that no further shares shall be issued in right of those shares or in pursuance of any offer made to the holder thereof; and

(*d*) that, except in a liquidation, no payment shall be made of any sums due from the company on those shares, whether in respect of capital or otherwise.

(2.) Where the Attorney-General makes an order directing that shares are subject to the restrictions referred to in the last preceding sub-section or, having made such an order in relation to any shares, refuses to make an order directing that the shares have ceased to be subject to those restrictions, any person aggrieved thereby may apply to the Court, and the Court may, if it sees fit, direct that the shares have ceased to be subject to those restrictions.

(3.) Any order of the Attorney-General or of the Court directing that shares have ceased to be subject to the restrictions referred to in sub-section (1.) of this section which is expressed to be made with a view to permitting a transfer of those shares may continue the application of the restrictions referred to in paragraphs (*c*) and (*d*) of that sub-section in relation to those shares, either in whole or in part, in so far as those paragraphs relate to any right acquired or offer made before the transfer.

(4.) Where any shares are for the time being subject to any restrictions referred to in sub-section (1.) of this section, a person who—

(*a*) having knowledge that the shares are subject to any such restrictions, exercises or purports to exercise any right to dispose of those shares or of any right to be issued with the shares;

(*b*) votes in respect of those shares, whether as holder or proxy, or appoints a proxy to vote in respect thereof; or

(*c*) being the holder of any of those shares, fails to notify the fact of their being subject to those restrictions to any person whom he does not know to be aware of that fact but does know to be entitled, apart from those restrictions, to vote in respect of those shares, whether as holder or proxy,

is guilty of an offence against this Ordinance.

Penalty: Five hundred pounds or imprisonment for six months, or both.

(5.) Where shares in a company are issued in contravention of the restrictions imposed pursuant to sub-section (1.) of this section, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Penalty: Five hundred pounds.

(6.) A prosecution shall not be instituted under this section except by or with the consent of the Attorney-General.

(7.) This section applies in relation to debentures as it applies in relation to shares.

Inspectors appointed in States and other Territories.

180. Where—

(*a*) under a law of a State or of another Territory of the Commonwealth corresponding with this Division an inspector has been appointed to investigate the affairs of a corporation; and

(*b*) the Attorney-General determines that, in connexion with that investigation, it is expedient that an investigation be made in the Territory,

the Attorney-General may, by notice published in the *Gazette*, declare that the inspector so appointed shall have the same powers and duties in the Territory in relation to the investigation as if the corporation were a company to which this Division applies and the inspector had been appointed under section one hundred and seventy-three of this Ordinance, and thereupon the inspector shall have those powers and duties.

PART VII.—ARRANGEMENTS AND RECONSTRUCTIONS.

Power to compromise with creditors and members. U.K. s. 206. N.S.W. s. 133. Vic. s. 90. Qld. s. 161. S.A. s. 171. W.A. s. 158. Tas. s. 124.

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

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

(3.) The Court may grant its approval to a compromise or arrangement subject to such alterations or conditions as it thinks just.

(4.) An order under sub-section (2.) of this section has no effect until an office copy of the order is lodged with the Registrar and, upon being so lodged, the order takes effect, or shall be deemed to have taken effect, on and from the date of lodgment or such earlier date as the Court may determine and as may be specified in the order.

(5.) Subject to the next succeeding sub-section, a copy of an order made under sub-section (2.) of this section shall be annexed to every copy of the memorandum of the company issued after the order has been made or, in the case of a company not having a memorandum, to every copy so issued of the instrument constituting or defining the constitution of the company.

(6.) The Court may, by order, exempt a company from compliance with the requirements of the last preceding sub-section or determine the period during which the company shall so comply.

(7.) Where a compromise or arrangement referred to in sub-section (1.) of this section (whether or not for the purposes of or in connexion with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies) has been proposed, the directors of the company shall, if a meeting of the members of the company by resolution so directs—

(*a*) instruct such accountants or solicitors or both as are named in the resolution to report on the proposals and forward their report or reports to the directors as soon as may be; and

(*b*) make such report or reports available at the registered office of the company for inspection by the shareholders and creditors of the company at least seven days before the date of any meeting ordered by the Court to be summoned as provided in sub-section (1.) of this section.

(8.) Where default is made in complying with sub-section (5.) or sub-section (7.) of this section, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Penalty: One hundred pounds.

(9.) Where no order has been made or resolution passed for the winding up of a company and a compromise or arrangement has been proposed between the company and its creditors or any class of them, the Court may, in addition to any of its powers, on the application in a summary way of the company or of any member or creditor of the company, restrain further proceedings in any action or proceeding against the company except by leave of the Court and subject to such terms as the Court imposes.

(10.) In this section—

"arrangement" includes a re-organization of the share capital of a company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both these methods;

"company" means any corporation or society liable to be wound up under this Ordinance.

Information as to compromise with creditors and members. U.K. s. 207. Vic. s. 91. Tas. s. 125.

182.—(1.) Where a meeting is summoned under the last preceding section, there shall—

(*a*) with every notice summoning the meeting which is sent to a creditor or member, be sent also a statement explaining the effect of the compromise or arrangement and, in particular, stating any material interests of the directors, whether as directors or as members or as creditors of the company or otherwise, and the effect thereon of the compromise or arrangement in so far as it is different from the effect on the like interests of other persons; and

(*b*) in every notice summoning the meeting which is given by advertisement, be included either such a statement or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement.

(2.) Where the compromise or arrangement affects the rights of debenture holders, the statement shall give the like explanation with respect to the trustees for the debenture holders as, under the last preceding sub-section, a statement is required to give with respect to the directors.

(3.) Where a notice given by advertisement includes a notification that copies of such a statement can be obtained, each creditor or member entitled to attend the meeting shall, on making application in the manner indicated by the notice, be furnished by the company free of charge with a copy of the statement.

(4.) Each director and each trustee for debenture holders shall give notice to the company of such matters relating to himself as may be necessary for the purposes of this section.

(5.) Where default is made in complying with any requirement of this section, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Penalty: Five hundred pounds.

(6.) For the purpose of the last preceding sub-section, the liquidator of the company or any trustee for debenture holders shall be deemed to be an officer of the company.

(7.) Notwithstanding the provisions of sub-section (5.) of this section, a person is not liable under that sub-section if he shows that the default was due to the refusal of any other person, being a director or trustee for debenture holders, to supply the necessary particulars as to his interests.

Provisions for facilitating reconstruction and amalgamation of companies. U.K. s. 208. N.S.W. s. 134. Vic. s. 92. Qld. s. 162. S.A. s. 172. W.A. s. 159. Tas. s. 126.

183.—(1.) Where an application is made to the Court under this Part for the approval of a compromise or arrangement and it is shown to the Court that the compromise or arrangement has been proposed for the purposes of or in connexion with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies and that, under the scheme, the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as "the transferor company") is to be transferred to another company (in this section referred to as "the transferee company"), the Court may, either by the order approving the compromise or arrangement or by any subsequent order, provide for all or any of the following matters:—

(*a*) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of the transferor company;

(*b*) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person;

(*c*) the continuation by or against the transferee company of any legal proceedings pending by or against the transferor company;

(*d*) the dissolution, without winding up, of the transferor company;

(*e*) the provision to be made for any persons who, within such time and in such manner as the Court directs, dissent from the compromise or arrangement;

(*f*) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(2.) Where an order made under this section provides for the transfer of property or liabilities, then, by virtue of the order, that property shall be transferred to and vest in, and those liabilities shall be transferred to and become the liabilities of, the transferee company, free, in the case of any particular property if the order so directs, from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(3.) Where an order is made under this section, every company in relation to which the order is made shall lodge within seven days of the making of the order—

(*a*) an office copy of the order with the Registrar; and

(*b*) where the order relates to land—an office copy of the order with the Registrar of Titles,

and any company which makes default in complying with this section and each officer of the company who is in default is guilty of an offence against this Ordinance.

Penalty: One hundred pounds.

Default penalty: Ten pounds.

(4.) An order made under this section that relates to land is not effective until—

(*a*) where the land is subject to the *Real Property Ordinance* 1925-1961—all entries which are necessary to give effect to such an order under that Ordinance have been made in the Register Book kept under that Ordinance; or

(*b*) where the land is not so subject—an office copy of the order has been registered under the *Registration of Deeds Ordinance* 1957.

(5.) In this section—

" liabilities " includes duties;

" property " includes property rights and powers of every description.

(6.) Notwithstanding the provisions of sub-section (10.) of section one hundred and eighty-one of this Ordinance, in this section " company " does not include any company other than a company as defined in section five of this Ordinance.

Take-over offers.

184.—(1.) In this section and in the Tenth Schedule—

" offeree corporation ", in relation to a take-over scheme or a take-over offer, means the corporation to shares in which the scheme or offer relates;

" offeror corporation ", in relation to a take-over scheme or a take-over offer, means the corporation or proposed corporation by or on behalf of which any take-over offer under the scheme, or the take-over offer, is made or to be made;

" take-over offer " means an offer or proposed offer for the acquisition of shares under a take-over scheme;

" take-over scheme " means a scheme involving the making of offers for the acquisition by or on behalf of a corporation or on behalf of a proposed corporation—

(*a*) of all the shares in another corporation or of all the shares of a particular class in another corporation; or

(*b*) of any shares in another corporation which (together with shares, if any, already held beneficially by the first-mentioned corporation or by any other corporation that is deemed by virtue of sub-section (5.) of section six of this Ordinance to be related to that corporation) carry the right to exercise, or control the exercise of, not less than one-third of the voting power at any general meeting of the other corporation.

(2.) A take-over offer shall not be made unless—

(*a*) the offeror corporation has, not earlier than twenty-eight days, and not later than fourteen days, before the offer is made, given or caused to be given to the offeree corporation notice in writing of the take-over scheme containing particulars of the terms of the take-over offers to be made under the scheme, together with a statement that complies with the requirements set out in Part B of the Tenth Schedule; and

(*b*) the offer complies with the requirements set out in Part A of that Schedule and there is attached to the offer—

(i) a copy of the statement given or caused to be given by the offeror corporation to the offeree corporation in pursuance of paragraph (*a*) of this sub-section; and

(ii) if the offeree corporation gives or causes to be given to the offeror corporation a statement in pursuance of paragraph (*a*) of the next succeeding sub-section or in pursuance of any corresponding enactment of a State or of another Territory of the Commonwealth—a copy of that statement.

(3.) Where an offeree corporation receives a notice and statement given in pursuance of the last preceding sub-section or in pursuance of any corresponding enactment of a State or of another Territory of the Commonwealth, the offeree corporation shall either—

(*a*) give or cause to be given to the offeror corporation, within fourteen days after the receipt of the notice and statement, a statement in writing that complies with the requirements set out in Part C of the Tenth Schedule; or

(*b*) give or cause to be given to each holder of shares in the offeree corporation to which the take-over scheme relates, within fourteen days after take-over offers are first made to shareholders under the take-over scheme, such a statement in writing.

(4.) A statement given or caused to be given by an offeree corporation in pursuance of the last preceding sub-section may contain such information in addition to that required by Part C of the Tenth Schedule as the directors of the offeree corporation think fit.

(5.) Where take-over offers are made under a take-over scheme, the offeror corporation shall forthwith give notice in writing to the offeree corporation that offers have been made under the scheme and of the date of the offers.

(6.) Where a take-over offer is made in contravention of this section or an offeror corporation fails to comply with the last preceding sub-section, the offeror corporation, and each officer

of the corporation who is in default, is guilty of an offence against this Ordinance and, where an offeree corporation fails to comply with sub-section (3.) of this section, the offeree corporation, and each officer of that corporation who is in default, is guilty of an offence against this Ordinance.

Penalty: Five hundred pounds or imprisonment for three months.

(7.) The provisions of sections forty-six and forty-seven of this Ordinance apply to and in relation to a statement given by an offeror corporation to an offeree corporation in pursuance of paragraph (*a*) of sub-section (2.) of this section, and to any copy of such a statement, as if—

(*a*) each reference in those sections to a prospectus were a reference to such a statement or a copy of such a statement;

(*b*) the reference in sub-section (1.) of section forty-six of this Ordinance to persons who subscribe for or purchase any shares or debentures were a reference to a person who accepts a take-over offer; and

(*c*) each reference in those sections to the allotment or sale of shares or debentures were a reference to the acceptance of a take-over offer.

(8.) Regulations may be made varying the requirements set out in any part of the Tenth Schedule, either by omitting or altering any such requirement or by adding additional requirements, and any reference in this section to the requirements of a Part of the Tenth Schedule shall be read as a reference to those requirements as so varied from time to time.

(9.) Regulations may be made making provision for and in relation to the granting of exemptions from all or any of the provisions of this section or the requirements set out in the Tenth Schedule.

(10.) Regulations may be made requiring the lodging with the Registrar or a Stock Exchange, or both of—

(*a*) copies of any notice or statement given in pursuance of this section; or

(*b*) notice in the prescribed form and containing such particulars as are prescribed of the giving of such a notice or statement.

Power to acquire shares of shareholders dissenting from scheme or contract approved by majority.
U.K. s. 209.
N.S.W. s. 135.
Vic. s. 93.
Qld. s. 163.
S.A. s. 173.
W.A. s. 160.
Tas. s. 127.

185.—(1.) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as "the transferor company") to another company or corporation (in this section referred to as "the transferee company") has, within four months after the making of the offer in that behalf by the transferee company, been approved as to the shares or as to each class of shares whose transfer is involved by the holders of not less than nine-tenths in nominal value of those shares or of the shares of that class (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary), the transferee company may, at any time within two months after the offer has been so approved, give notice in the prescribed form and manner to any dissenting shareholder that it desires to acquire his shares and, when such a notice is given, the transferee company is, unless, on an application made by the dissenting shareholder within one month from the date on which the notice was given or within seven days of a statement being supplied to a dissenting shareholder pursuant to sub-section (3.) of this section (whichever is the later), the Court thinks fit to order otherwise, entitled and bound to acquire those shares on the terms which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company.

(2.) Notwithstanding anything in the last preceding sub-section, where shares in the transferor company of the same class or classes as the shares whose transfer is involved are already held as aforesaid to a nominal value greater than one-tenth of the aggregate of their nominal value and that of the shares (other than those already held as aforesaid) whose transfer is involved, the provisions of that sub-section do not apply unless—

(*a*) the transferee company offers the same terms to all holders of the shares (other than those already held as aforesaid) whose transfer is involved or, where those shares include shares of different classes, of each class of them; and

(*b*) the holders who approve the scheme or contract, besides holding not less than nine-tenths in nominal value of the shares (other than those already held as aforesaid) whose transfer is involved, are not less than three-fourths in number of the holders of those shares.

(3.) Where a transferee company has given notice to a dissenting shareholder that it desires to acquire his shares, the dissenting shareholder is entitled to require the company, by a demand in writing served on that company within one month from the date on which the notice was given, to be supplied with

a statement in writing of the names and addresses of all other dissenting shareholders as shown in the register of members, and the transferee company is neither entitled nor bound to acquire the shares of the dissenting shareholders until fourteen days after the posting of the statement of such names and addresses to the dissenting shareholder.

(4.) Where, in pursuance of a scheme or contract referred to in sub-section (1.) of this section, shares in a company are transferred to another company or its nominee and those shares, together with any other shares in the first-mentioned company held by, or by a nominee for, the transferee company or its subsidiary at the date of the transfer, comprise or include nine-tenths in nominal value of the shares in the first-mentioned company or of any class of those shares, then—

(*a*) the transferee company shall, within one month from the date of the transfer (unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement) give notice of that fact in the prescribed form and manner to the holders of the remaining shares or of the remaining shares of that class who have not assented to the scheme or contract; and

(*b*) any such holder may, within three months from the giving of the notice to him, require the transferee company to acquire the shares in question,

and, where a shareholder gives notice under paragraph (*b*) of this sub-section with respect to any shares, the transferee company is entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders were transferred to it or on such other terms as are agreed or as the Court, on the application of either the transferee company or the shareholder, thinks fit to order.

(5.) Where a notice has been given by the transferee company under sub-section (1.) of this section and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, after the expiration of one month after the date on which the notice has been given or, if an application to the Court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company together with an instrument of transfer executed, on behalf of the shareholder, by a person appointed by the transferee company and, on its own behalf, by the transferee company, and pay, allot or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which, by virtue of this section, that company is entitled to acquire, and the transferor company

shall thereupon register the transferee company as the holder of those shares.

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

(7.) Where any consideration other than cash is held in trust by a company for any person under the provisions of this section, it may, after the expiration of two years, and shall, before the expiration of ten years, from the date on which such consideration was allotted or transferred to it, transfer such consideration to the Treasurer.

(8.) The Treasurer shall sell or dispose of any consideration so received in such manner as he thinks fit and shall pay the proceeds of such sale or disposal into the Consolidated Revenue Fund, but if, after so doing, the Treasurer is satisfied that a person is entitled to the consideration, he may pay an amount equal to those proceeds to that person.

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

(10.) This section does not apply to or in relation to an offer made before the date of commencement of this Ordinance and approved before that date in the manner referred to in sub-section (1.) of section one hundred and thirty-five of the Companies Act, and that last-mentioned section shall continue to apply to and in relation to the scheme or contract to which the offer relates as if this Ordinance had not been made.

Remedy in cases of oppression. U.K. s. 210. Vic. s. 94. Qld. s. 379A. Tas. s. 128.

186.—(1.) A member of a company who complains that the affairs of the company are being conducted in a manner oppressive to one or more of the members (including himself) may apply to the Court for an order under this section, and, following on a report by an inspector under this Ordinance, the Attorney-General may apply for such an order.

(2.) If the Court is of opinion that the company's affairs are being conducted in a manner oppressive to one or more of the members, the Court may, with a view to bringing to an end the matters complained of—

(*a*) except where paragraph (*b*) of this sub-section applies—make an order that the company be wound up; or

(*b*) where the Court is of opinion that to wind up the company would unfairly prejudice that member or those members but otherwise the facts would justify the making of a winding up order on the

grounds that it is just and equitable that the company be wound up, or that, for any other reason, it is just and equitable to make an order (other than a winding up order) under this section—make such order as it thinks fit whether for regulating the conduct of the company's affairs in future or for the purchase of the shares of any members by other members or by the company and, in the case of a purchase by the company, for the reduction accordingly of the company's capital, or otherwise.

(3.) Where an order that the company be wound up is made pursuant to paragraph (*a*) of the last preceding sub-section, the provisions of this Ordinance relating to winding up of a company apply, with such adaptations as are necessary, as if the order had been made upon a petition duly presented to the Court by the company.

(4.) Where an order under this section makes an alteration in or addition to any company's memorandum or articles, then, notwithstanding anything in any other provision of this Ordinance, but subject to the provisions of the order, the company concerned has no power without the leave of the Court to make any further alteration in or addition to the memorandum or articles inconsistent with the provisions of the order, but, subject to the foregoing provisions of this sub-section, the alterations or additions made by the order are of the same effect as if duly made by resolution of the company.

(5.) An office copy of an order made under this section shall be lodged by the applicant with the Registrar within fourteen days after the making of the order.

(6.) If default is made in complying with the last preceding sub-section, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Default penalty: Ten pounds.

PART VIII.—RECEIVERS AND MANAGERS.

Disqualification for appointment as receiver.
U.K. ss. 366–367.
N.S.W. s. 335.
Vic. s. 81.
Qld. s. 302.
S.A. s. 311.
W.A. s. 362.
Tas. s. 149.

187.—(1.) The following are not qualified to be appointed, and shall not act, as receiver of the property of a company:—

(*a*) a corporation;

(*b*) an undischarged bankrupt;

(*c*) a mortgagee of any property of the company, an auditor of the company or an officer of the company or of any corporation which is a mortgagee of the property of the company;

(*d*) a person who is not a registered liquidator.

(2.) Nothing in paragraph (*a*) or (*d*) of the last preceding sub-section applies to any corporation authorized by any Ordinance to act as receiver of the property of a company.

(3.) Nothing in this section disqualifies a person from acting as receiver of the property of a company if acting under an appointment made before the commencement of this Ordinance.

Liability of receiver.
U.K. s. 369.
N.S.W. s. 337.
Vic. s. 82.
S.A. s. 311.
W.A. s. 362.
Tas. s. 150.

188.—(1.) A receiver or other authorized person entering into possession of any assets of a company for the purpose of enforcing any charge is, notwithstanding any agreement to the contrary, but without prejudice to his rights against the company or any other person, liable for debts incurred by him in the course of the receivership or possession for services rendered, goods purchased or property hired, leased, used or occupied.

(2.) The last preceding sub-section shall not be construed so as to constitute the person entitled to the charge a mortgagee in possession.

(3.) A receiver or manager of the property of a company appointed under the powers contained in any instrument may apply to the Court for directions in relation to any matter arising in connexion with the performance of his functions.

Power of Court to fix remuneration of receivers or managers.
U.K. s. 371.
N.S.W. s. 338.
Vic. s. 83.
Qld. s. 304.
S.A. s. 312.
W.A. s. 363.
Tas. s. 151.

189.—(1.) The Court may, on application by the liquidator or the official manager of a company, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver or manager of the property of the company.

(2.) The power of the Court—

(*a*) where no previous order has been made with respect thereto, extends to fixing the remuneration for any period before the making of the order or the application therefor;

(*b*) is exercisable notwithstanding that the receiver or manager has died or ceased to act before the making of the order or the application therefor; and

(*c*) where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that fixed for that period, extends to requiring him or his personal representatives to account for the excess or such part thereof as may be specified in the order.

(3.) The power conferred by paragraph (*c*) of the last preceding sub-section shall not be exercised with respect to any period before the making of the application for the order unless, in the opinion of the Court, there are special circumstances making it proper for the power to be so exercised.

(4.) The Court may from time to time, on an application made either by the liquidator or the official manager or by the receiver or manager, vary or amend an order made under this section.

Appointment of liquidator as receiver.
U.K. s. 368.
N.S.W. s. 336.
Vic. s. 84.
Qld. s. 302 (4).
Tas. s. 152.

190. Where an application is made to the Court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the Court, the liquidator may be so appointed.

Notification of appointment of receiver.
U.K. s. 102.
N.S.W. s. 191.
Vic. s. 79.
Qld. s. 90.
S.A. s. 107.
Tas. s. 78.

191.—(1.) If a person obtains an order for the appointment of a receiver or manager of the property of a company or of the property within the Territory of any other corporation, or appoints such a receiver or manager under any powers contained in any instrument, he shall, within seven days after he has obtained the order or made the appointment, lodge notice in the prescribed form of the fact with the Registrar.

(2.) Where a person appointed as receiver or manager of the property of a company or other corporation under the powers contained in any instrument ceases to act as such, he shall, within seven days thereafter, lodge with the Registrar notice in the prescribed form to that effect.

(3.) A person who makes default in complying with the requirements of this section is guilty of an offence against this Ordinance.

Default penalty: Ten pounds.

Statement that receiver appointed.
U.K. s. 370.
N.S.W. s. 337.
Vic. s. 85.
Qld. s. 303.
Tas. s. 153.

192.—(1.) Where a receiver or manager of the property of a corporation has been appointed, every invoice, order for goods or business letter issued by or on behalf of the corporation or the receiver or manager or the liquidator of the corporation, being a document on or in which the name of the corporation appears, shall contain a statement immediately following the name of the corporation that a receiver or manager has been appointed.

(2.) If default is made in complying with this section, the corporation, and each officer or liquidator of the corporation, and each receiver or manager, who knowingly authorized or permitted the default is guilty of an offence against this Ordinance.

Provisions as to information where receiver or manager appointed.
U.K. s. 372.

193.—(1.) Where a receiver or manager of the property of a company (in this section and in the next succeeding section called " the receiver ") is appointed—

(*a*) the receiver shall forthwith send notice to the company of his appointment;

(*b*) there shall, within fourteen days after receipt of the notice or such longer period as may be allowed by the Court or by the receiver, be made out and submitted to the receiver in accordance with the next succeeding section a statement in the prescribed form as to the affairs of the company; **and**

(*c*) the receiver shall, within one month after receipt of the statement—

(i) lodge with the Registrar a certified copy of the statement and a copy of any comments he sees fit to make thereon;

(ii) send to the company a copy of any such comments or, if he does not see fit to make any comment, a notice to that effect; and

(iii) where the receiver is appointed by or on behalf of the holders of debentures of the company, send to the trustees, if any, for those holders a copy of the statement and his comments, if any, thereon.

(2.) The last preceding sub-section does not apply in relation to the appointment of a receiver or manager to act with an existing receiver or manager or in place of a receiver or manager dying or ceasing to act, except that, where that sub-section applies to a receiver or manager who dies or ceases to act before that sub-section has been fully complied with, the references in paragraphs (*b*) and (*c*) of that sub-section to the receiver shall, subject to the next succeeding sub-section, be read as including references to his successor and to any continuing receiver or manager.

(3.) Where the company is being wound up, this section and the next succeeding section apply notwithstanding that the receiver or manager and the liquidator are the same person, but they shall so apply with any necessary modifications arising from that fact.

(4.) If a person makes default in complying with any of the requirements of this section, he is guilty of an offence against this Ordinance.

Default penalty: Ten pounds.

Special provisions as to statement submitted to receiver.
U.K. s 373.

194.—(1.) The statement as to the affairs of a company required by the last preceding section to be submitted to the receiver shall show as at the date of the receiver's appointment the particulars of the company's assets, debts and liabilities, the names and addresses of its creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be prescribed.

(2.) The statement shall be submitted by, and be verified by statutory declaration in the prescribed form made by, one or more of the persons who were at the date of the receiver's

appointment the directors of the company and by the person who was at that date the secretary of the company, or by such of the persons hereafter in this sub-section mentioned as the receiver may require to submit and verify the statement, that is to say:—

(*a*) persons who are or have been officers;

(*b*) persons who have taken part in the formation of the company at any time within one year before the date of the receiver's appointment;

(*c*) persons who are in the employment of the company, or have been in the employment of the company within that year, and are, in the opinion of the receiver, capable of giving the information required;

(*d*) persons who are or have been within that year officers of or in the employment of a corporation which is, or within that year was, an officer of the company to which the statement relates.

(3.) A person making the statement and statutory declaration shall be allowed, and shall be paid by the receiver (or his successor) out of his receipts, such costs and expenses incurred in and about the preparation and making of the statement and statutory declaration as the receiver (or his successor) may consider reasonable, subject to an appeal to the Court.

(4.) If a person makes default in complying with the requirements of this section, he is guilty of an offence against this Ordinance.

Default penalty: Ten pounds.

(5.) References in this section to a receiver's successor shall be read as including a continuing receiver or manager.

195.—(1.) A receiver or manager of the property of a company, or of the property within the Territory of any other corporation, shall— Lodging of accounts of receivers and managers. U.K. s. 374. N.S.W. s. 339. Vic. s. 86. Qld. s. 305. S.A. s. 313. W.A. s. 364. Tas. s. 154.

(*a*) within one month after the expiration of the period of six months from the date of his appointment and of every subsequent period of six months, and within one month after he ceases to act as receiver or manager, lodge with the Registrar an account in the prescribed form showing—

(i) his receipts and his payments during that period of six months or, where he ceases to act as receiver or manager, during the period from the end of the

period to which the last preceding account related or from the date of his appointment, as the case may be, up to the date of his so ceasing;

(ii) the aggregate amount of his receipts and payments during all preceding periods since his appointment; and

(iii) where he has been appointed pursuant to the powers contained in any instrument —the amount owing under that instrument—

(A) in the case of the first account —at the time of his appointment and at the expiration of the period to which the account relates; and

(B) in the case of any other account—at the expiration of the period to which the account relates,

and his estimate of the total value, at the expiration of the period to which the account relates, of the assets of the company or corporation which are subject to the instrument; and

(*b*) before lodging the account, verify by statutory declaration in the prescribed form all accounts and statements referred to therein.

(2.) The Registrar may, of his own motion or on the application of the company or other corporation or a creditor, cause the accounts to be audited by a registered company auditor appointed by the Registrar and, for the purpose of the audit, the receiver or manager shall furnish the auditor with such vouchers and information as he requires, and the auditor may at any time require the production of and inspect any books of account kept by the receiver or manager or any document or other records relating thereto.

(3.) Where the Registrar causes the accounts to be audited upon the request of the company or other corporation or a creditor, he may require the applicant to give security for the payment of the cost of the audit.

(4.) A receiver or manager who makes default in complying with the provisions of this section is guilty of an offence against this Ordinance.

Default penalty: Ten pounds.

Payments of certain debts out of assets subject to floating charge in priority to claims under charge.
U.K. s. 94.
N.S.W. s. 173.
Vic. s. 87.
Qld. ss. 101-101A.
S.A. s. 98.
W.A. s. 94.
Tas. s. 155.

196.—(1.) Where a receiver is appointed on behalf of the holders of any debentures of a company secured by a floating charge, or possession is taken by or on behalf of debenture holders of any property comprised in or subject to a floating charge, then, if the company is not at the time in the course of being wound up, debts which in a winding up are preferential debts and are due by way of wages, salary, annual leave or long service leave, and any amount which in a winding up is payable in pursuance of sub-section (3.) or sub-section (5.) of section two hundred and ninety-two of this Ordinance, shall be paid out of any assets coming to the hands of the receiver or other person taking possession in priority to any claim for principal or interest in respect of the debentures and shall be paid in the same order of priority as is prescribed by that section in respect of those debts and amounts.

(2.) For the purposes of the last preceding sub-section, a reference in paragraphs (*b*) and (*d*) of sub-section (1.) of section two hundred and ninety-two of this Ordinance to the commencement of the winding up shall be read as a reference to the date of the appointment of the receiver or of possession being taken as aforesaid, as the case requires.

(3.) A payment made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

Enforcement of duty of receiver &c., to make returns.
U.K. s. 375.
N.S.W. s. 340.
Vic. s. 88.
Qld. s. 306.
S.A. s. 314.
W.A. s. 365.
Tas. s. 156.

197.—(1.) If a receiver or manager of the property of a company—

(*a*) who has made default in making or lodging any return, account or other document or in giving any notice required by law fails to make good the default within fourteen days after the service on him by any member or creditor of the company or trustee for debenture holders of a notice requiring him to do so; or

(*b*) who has been appointed under the powers contained in any instrument has, after being required at any time by the liquidator of the company so to do, failed to render proper accounts of his receipts and payments and to vouch the same and to pay over to the liquidator the amount properly payable to him,

the Court may, on an application made for the purpose, make an order directing him to make good the default within such time as is specified in the order.

(2.) In the case of any such default as is mentioned in paragraph (*a*) of the last preceding sub-section, an application for the purposes of this section may be made by any member or

creditor of the company or trustee for debenture holders, and in the case of any such default as is mentioned in paragraph (*b*) of that sub-section, the application shall be made by the liquidator.

PART IX.—OFFICIAL MANAGEMENT.

Power of company to call meeting of creditors to appoint official manager.

198.—(1.) Where a company is unable to pay its debts as and when they become due and payable, in lieu of proceedings being taken in respect of the company under Part X., the company may, and shall if so requested in writing by any creditor of the company who has an unsatisfied judgment against the company for a debt or not less than Two hundred and fifty pounds, cause a meeting of its creditors to be summoned for the purpose of placing the company under official management and appointing an official manager of the company as provided in this Part.

(2.) The meeting shall be held at a time and place convenient to the majority in value of the creditors and shall be summoned by notices in the prescribed form served personally or by post on each of the creditors not less than seven days nor more than fourteen days before the date of meeting and by advertisement of the notice published once during that period in a daily newspaper published in the Territory.

(3.) The chairman shall at the meeting determine whether the meeting has been held at a time and place convenient to the majority in value of the creditors, and his decision is final unless it is shown not to be *bona fide*.

(4.) If the chairman decides that the meeting has not been held at a time and place convenient to that majority, the meeting lapses.

Stay of proceedings.

199. Except by leave of the Court and subject to such terms as the Court imposes, after the service of the notices calling the meeting referred to in the last preceding section, no action or proceeding in any court shall be proceeded with or commenced against the company until after the meeting or any adjournment thereof or, where it is resolved at the meeting that the company be placed under official management, until it ceases to be under official management.

Provisions as to meeting of creditors.

200. The following provisions apply with respect to any meeting of creditors held under section one hundred and ninety-eight of this Ordinance:—

(*a*) the company shall submit to the meeting a statement of affairs of the company in writing, in the prescribed form and signed by the directors and auditors thereof, which statement shall be made up to a date not earlier than thirty days before the date of the meeting;

(*b*) the meeting may by resolution be adjourned from time to time except that a meeting may not be adjourned to a date later than thirty days after the date of the service of the notices calling the meeting;

(*c*) subject to the provisions of this Part, the creditors present in person or by proxy shall conduct the proceedings of the meeting as they may determine.

Power of creditors to appoint official manager.

201.—(1.) The creditors of the company may, by special resolution at the meeting or any adjournment thereof—

(*a*) determine that the company shall, for such period (being a period commencing not earlier than fourteen days after the passing of the resolution) and subject to such conditions as are mentioned in the resolution, be under the sole management of a person named in the resolution (in this Part called "the official manager"), being a person who has consented in writing to act as the official manager;

(*b*) determine the amount of the salary or remuneration of the official manager or delegate the fixing of the amount to a committee of management; and

(*c*) if the creditors think it desirable so to do, determine that a committee of management be appointed, being a committee comprising—

(i) three persons who are, and are to be appointed by, creditors of the company by special resolution; and

(ii) two persons who are, and are to be appointed by, members of the company at a general meeting of the company.

(2.) Within seven days after the passing of the resolution, the company shall—

(*a*) cause a true copy of the resolution, together with notice in the prescribed form of the resolution and a certified copy of the statement of affairs submitted by the company to the meeting or adjournment thereof at which the resolution was passed, to be lodged with the Registrar and notice of the resolution to be published in a daily newspaper published in the Territory; and

(*b*) give written notice to creditors and members of—

(i) the resolution; and

(ii) the right of appeal conferred by section two hundred and ten of this Ordinance.

Effect of resolution.

202.—(1.) During the period mentioned in a resolution passed in pursuance of the last preceding section—

(*a*) the official manager named therein may perform any of the functions and exercise any of the powers of the directors;

(*b*) the costs of the official management shall be paid in preference to all other liabilities of the company; and

(*c*) subject to paragraph (*b*) of this sub-section, all liabilities incurred or to be incurred by the official manager shall be payable in the order in which they are incurred and in preference to unsecured debts of the company as at the date of his appointment.

(2.) Upon the commencement of the period mentioned in the resolution, the directors of the company shall cease to hold office and the official manager shall assume the management of the company and shall, within two months after the expiration of six months after the date of the assumption of his management and of every subsequent period of six months or if the Registrar so requires at any time before the expiry of any such period of six months, submit to a meeting of the company and to a meeting of the creditors, and lodge with the Registrar, a statement signed by the auditors of the company showing the assets and liabilities of the company and its debts and obligations, together with a report on all such matters, and all such other information as may be necessary to enable an assessment of the position of the company to be made.

(3.) Nothing in this Part prejudices or otherwise affects the rights of any secured creditor of the company.

Termination of appointment of official manager.

203. Subject to the provisions of section two hundred and eleven of this Ordinance, the appointment of a person as the official manager of a company may be determined—

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

(i) the committee of management; or

(ii) a meeting of creditors;

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

(*c*) by an order of the Court.

Appointment of official manager not to affect appointment and duties of auditors.

204. Notwithstanding the appointment of a person as the official manager of a company and for so long as the company is under official management, the provisions of this Ordinance relating to the appointment and reappointment of auditors and the rights and duties of auditors continue to apply and, in that application, any reference in those provisions to the directors of the company shall be read as a reference to the official manager.

205.—(1.) Subject to the provisions of this Ordinance and to such provisions of the memorandum and articles of the company as are not inconsistent with the provisions of this Part, the official manager of a company— Duties of official manager.

(*a*) shall, as soon as practicable after his appointment, proceed to recover and enter into possession of all the assets of the company, movable and immovable, and shall undertake the management of the company;

(*b*) shall conduct the management in such manner as he may deem most economical and most beneficial to the interests of the members and the creditors;

(*c*) shall comply with any directions of the creditors which are agreed to by special resolution at any meeting of creditors of which all creditors have been given special notice;

(*d*) shall, if he ceases for any reason to be official manager, within seven days after his resignation or the receipt by him of written notice of his removal from office, give to the Registrar written notice in the prescribed form of such resignation or removal;

(*e*) shall comply with all requirements of this Ordinance relating to the keeping of accounts and the lodging of annual returns and perform all other duties imposed on the company and the directors by this Ordinance;

(*f*) shall, during the period the company is under his management, convene the annual general meeting and shall furnish to the persons entitled thereto a report containing such information as is required by this Ordinance in the report of directors together with all duly audited accounts of the company at such times and in such form and manner as would have been required from the directors if the company had not been placed under official management; and

(*g*) shall, if at any time he is of opinion that the continuance of official management will not enable the company to meet its obligations, give notice forthwith by post to all the members and creditors of the company of that opinion.

(2.) An official manager who fails to comply with any of the provisions of this section is guilty of an offence against this Ordinance.

Penalty: One hundred pounds.

Undue preferences in case of official management.

206.—(1.) Every disposition of its property which, if made by an individual, would in the event of his bankruptcy be void or voidable is, if made by a company placed under official management and unable to pay all its debts, void or voidable in like manner, and the provisions of the law relating to bankruptcy apply, with such adaptations as are necessary, to such a disposition.

(2.) For the purposes of this section, the date of the passing of the resolution by the creditors appointing the official manager shall be deemed to be the date which corresponds with the date of the presentation of the bankruptcy petition in the case of an individual.

Application of assets during official management and disposal thereof.

207.—(1.) The official manager of a company shall not, without the leave of the Court or the committee of management or the company granted in general meeting, sell or otherwise dispose of any of the company's assets save in the ordinary course of the company's business.

(2.) Any moneys of the company becoming available to the official manager shall be applied by him in paying the costs of the official management and in the payment of debts incurred in the conduct by him of the company's business and, so far as the circumstances permit, in the payment of the debts of the company which were incurred before the date of the resolution appointing an official manager.

(3.) Subject to the provisions of section two hundred and two of this Ordinance, the costs of the official management and the claims of the creditors of the company shall be paid in accordance with Subdivision B of Division 4 of Part X. as if those costs were costs of the winding up of a company and those claims were claims against a company being wound up, and the provisions of that Subdivision apply, with the necessary adaptations, to and in relation to those costs and claims accordingly.

Application of certain provisions in winding up to official management.

208.—(1.) Where a company is placed under official management, the provisions of paragraph (*g*) of sub-section (1.) of section two hundred and eighteen, and of sections two hundred and forty-eight, three hundred and four, three hundred and five and three hundred and six of this Ordinance apply as if the company under official management were a company being wound up and the official manager were the liquidator, and, in that application, any reference in those sections to contributories shall be read as a reference to members.

(2.) The provisions of sections two hundred and forty-nine and two hundred and fifty of this Ordinance, and, when the Court so orders, of any other section specified by the Court, apply in an official management as they apply in a winding up by the Court or any winding up of a company which is unable to pay its debts, and, in that application, any reference in those

sections to the liquidator shall be read as a reference to the official manager and any reference to a contributory shall be read as a reference to a member of the company.

Cancellation by Court of official management and power of Court to give directions.

209.—(1.) If at any time, on the application of the official manager or of any creditor of the company or member, it appears to the Court that the purpose for which the official manager was appointed has been fulfilled, or for any reason it is undesirable that the company should remain under official management, the Court may cancel the appointment and thereupon the official manager shall, subject to the provisions of section two hundred and eleven of this Ordinance, cease to be the official manager of the company.

(2.) In cancelling the appointment, the Court shall give such directions as may be necessary for the resumption of the management and control of the company by the officers thereof and such directions may include directions for the calling of a general meeting of members for the election of directors.

Subject to appeal resolution to appoint official manager binding.

210.—(1.) Where a resolution has been passed in pursuance of sub-section (1.) of section two hundred and one of this Ordinance, the resolution is, subject to the right of appeal conferred by this section, binding on the company and the members and creditors of the company.

(2.) A creditor or group of creditors to whom the company owes more than ten per centum of the total liabilities of the company to its creditors, or any member or group of members holding not less than ten per centum of the paid up capital of the company, may appeal to the Court against the resolution (in so far as it was passed by virtue of paragraph (*a*) of sub-section (1.) of section two hundred and one of this Ordinance) at any time within a period of fourteen days after the passing thereof, and the Court may, having regard to whether or not the resolution is reasonable and in particular, to its effect upon the interests of the creditors and the members of the company, amend, vary or cancel the resolution.

(3.) Subject to this Part, pending the determination of an appeal under the provisions of this section, the acts of an official manager are valid and binding on the company and the members and creditors thereof, notwithstanding that the resolution may be amended, varied or cancelled by the Court to which the appeal is made.

Release of official manager.

211.—(1.) Where the appointment of an official manager has been determined, the adoption by a meeting of the creditors of the reports and accounts of the official manager discharges him from all liability in respect of any act done or default made by him in the management of the company or otherwise in relation to his conduct as official manager.

(2.) The adoption of the report and accounts does not release or discharge the official manager if it was obtained by fraud or by suppression or concealment of any material fact, or discharge him from any liability which, by virtue of any enactment or rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company.

(3.) If the reports and accounts in respect of the company of the official manager are not, within two months after he has made the reports and accounts, adopted by a meeting of creditors, the official manager may apply to the Court for an order of release.

(4.) The Court may grant or withhold the release and a release by the Court has the same effect as if the reports and accounts had been adopted by a meeting of creditors.

Documents of company under official management to state that fact.

212.—(1.) Where an official manager of a company has been appointed, every invoice, order for goods or business letter issued by or on behalf of the company or the manager, being a document on or in which the name of the company appears, shall contain a statement immediately following the name of the company that an official manager has been appointed.

(2.) If default is made in complying with this section, the company and each officer and each official manager who knowingly authorizes or permits the default is guilty of an offence against this Ordinance.

Functions of committee of management.

213.—(1.) A committee of management—

(*a*) shall assist and advise the official manager on any matters relating to the management of the company on which he requires their advice or assistance; and

(*b*) may appoint a deputy official manager who, while acting as official manager in the absence of the official manager, shall have the powers, duties and functions of an official manager.

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

(3.) Subject to this section and the regulations, the provisions of sub-sections (2.) to (9.) (inclusive) of section two hundred and forty-two of this Ordinance apply with respect to committees of management and with respect to the proceedings of and vacancies in committees of management and to the removal of members thereof, and, in that application, any reference to the committee of inspection shall be read as a reference to the committee of management, any reference to the liquidator

shall be read as a reference to the official manager and any reference to a contributory shall be read as a reference to a member of the company.

Accidental omission to give notice.

214. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, a person does not invalidate proceedings at a meeting held for the purposes of this Part.

Interpretation.

215. For the purposes of this Part—

"special resolution" means a resolution passed by a majority in number representing at least three-fourths in value and one-half in number of the creditors present and voting either in person or by proxy at the meeting, every creditor for under Ten pounds being reckoned in value only;

"special notice", in relation to a meeting of creditors, means notice of the meeting given by means of a notice sent to each of the creditors not less than fourteen days or more than twenty-one days before the date of the meeting.

PART X.—WINDING UP.

Division 1.—Preliminary.

Modes of winding up.
N.S.W. s. 199.
Qld. s. 164.
S.A. s. 186.
W.A. s. 178.

216.—(1.) The winding up of a company may be either—

(*a*) by the Court; or

(*b*) voluntary.

(2.) Except where the contrary intention appears, the provisions of this Ordinance with respect to winding up apply to the winding up of a company in either of those modes.

Crown bound by certain provisions.
N.S.W. s. 199 (3).

217. The provisions of this Part relating to the remedies against the property of a company, the priorities of debts and the effect of an arrangement bind the Crown.

Liability as contributories of present and past members.
U.K. s. 212.
N.S.W. s. 200.
Vic. s. 156.
Qld. s. 165.
S.A. s. 187.
W.A. s. 179.
Tas. s. 159.

218.—(1.) On a company being wound up, every present and past member is liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding up and for the adjustment of the rights of the contributories among themselves, subject to the provisions of the next succeeding sub-section and the following qualifications:—

(*a*) a past member is not liable to contribute if he has ceased to be a member for one year or more before the commencement of the winding up;

(*b*) a past member is not liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;

(*c*) a past member is not liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Ordinance;

(*d*) in the case of a company limited by shares, no contribution is required from a member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member;

(*e*) in the case of a company limited by guarantee, no contribution is, subject to sub-section (4.) of this section, required from a member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;

(*f*) nothing in this Ordinance invalidates any provision contained in a policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted or whereby the funds of the company are alone made liable in respect of the policy or contract;

(*g*) a sum due to a member in his character of a member by way of dividends, profits or otherwise shall not be treated as a debt of the company payable to that member in a case of competition between himself and any other creditor not a member, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(2.) In the winding up of a limited company, a director, whether past or present, whose liability is unlimited is, in addition to his liability, if any, to contribute as an ordinary member, liable to make a further contribution as if he were, at the commencement of the winding up, a member of an unlimited company.

(3.) Notwithstanding anything in the last preceding sub-section—

(*a*) a past director is not liable to make a further contribution if he has not held office during the period of one year immediately preceding the commencement of the winding up;

(*b*) a past director is not liable to make a further contribution in respect of any debt or liability of the company contracted after he ceased to hold office; and

(*c*) subject to the articles of the company, a director is not liable to make a further contribution unless the Court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company and the costs charges and expenses of the winding up.

(4.) On the winding up of a company limited both by shares and by guarantee, every member is liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

Nature of liability of contributory.
U.K. s. 214.
N.S.W. s. 202.
Vic. s. 157.
Qld. s. 167.
S.A. s. 189.
W.A. s. 180.
Tas. s. 160.

219. The liability of a contributory is of the nature of a specialty debt accruing due from him at the time when his liability commenced but payable at the times when calls are made for enforcing the liability.

Contributories in case of death or bankruptcy of member.
U.K. s. 215.
N.S.W. s. 203.
Vic. s. 158.
Qld. s. 168.
S.A. s. 190.
W.A. s. 181.
Tas. s. 161.

220.—(1.) If a contributory dies, either before or after his name has been placed on the list of contributories, his personal representatives are liable in due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly, and, if they make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory and for compelling payment thereout of the money due.

(2.) If a contributory becomes bankrupt or assigns his estate for the benefit of his creditors, either before or after his name has been placed on the list of contributories, his trustee shall represent him for all the purposes of the winding up.

Division 2.—Winding Up by the Court.

Subdivision A.—General.

Application for winding up.
N.S.W. s. 210.
Vic. ss. 161, 214.
Qld. ss. 175, 260.
S.A. s. 196.
W.A. s. 187.
Tas. s. 164.

221.—(1.) A company (whether or not it is being wound up voluntarily) may be wound up under an order of the Court on the petition of—

(*a*) the company;

(*b*) any creditor, including a contingent or prospective creditor, of the company;

(*c*) a contributory;

(*d*) the liquidator;

(*e*) the Attorney-General pursuant to section one hundred and seventy-five of this Ordinance; or

(*f*) the official manager of the company appointed pursuant to Part IX.,

or of any two or more of those parties.

(2.) Notwithstanding anything in the last preceding sub-section—

(*a*) a contributory is not entitled to present a petition on any ground specified in paragraph (*a*), (*b*), (*c*), (*e*) or (*h*) of sub-section (1.) of the next succeeding section unless—

(i) the number of members is reduced, in the case of a proprietary company (other than a proprietary company the whole of the issued shares of which are held by a holding company which is a public company under this Ordinance or under the law of a State or of another Territory of the Commonwealth), below two or, in the case of any other company, below five; or

(ii) the shares in respect of which he is a contributory or some of them were originally allotted to him, have been held by him and registered in his name for at least six months during the eighteen months before the presentation of the petition or have devolved on him through the death of a former holder;

(*b*) a petition shall not, if the ground of the petition is default in lodging the statutory report or in holding the statutory meeting, be presented by any person except a contributory or be presented before the expiration of fourteen days after the last day on which the meeting ought to have been held;

(*c*) the Court shall not hear the petition if it is presented by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and a *prima facie* case for winding up has been established to the satisfaction of the Court; and

(*d*) the Court shall not, where a company is being wound up voluntarily, make a winding up order unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories.

Circumstances in which company may be wound up by Court.
U.K. ss. 222–223.
N.S.W. ss. 208–209.
Vic. s. 160.
Qld. ss. 173–174.
S.A. ss. 194–195.
W.A. ss. 185–186.
Tas. s. 163.

222.—(1.) The Court may order the winding up of a company if—

(*a*) the company has by special resolution resolved that it be wound up by the Court;

(*b*) default is made by the company in lodging the statutory report or in holding the statutory meeting;

(*c*) the company does not commence business within a year from its incorporation or suspends its business for a whole year;

(*d*) the number of members is reduced, in the case of a proprietary company (other than a proprietary company the whole of the issued shares in which are held by a holding company which is a public company under this Ordinance or under the law of a State or of another Territory of the Commonwealth), below two or, in the case of any other company, below five;

(*e*) the company is unable to pay its debts;

(*f*) directors have acted in the affairs of the company in their own interests rather than in the interests of the members as a whole or in any other manner whatsoever which appears to be unfair or unjust to other members;

(*g*) an inspector appointed under section one hundred and sixty-nine or section one hundred and seventy of this Ordinance has reported that he is of opinion—

(i) that the company cannot pay its debts and should be wound up; or

(ii) that it is in the interests of the public or of the shareholders or of the creditors that the Company should be wound up; or

(*h*) the Court is of opinion that it is just and equitable that the company be wound up.

(2.) A company shall be deemed to be unable to pay its debts if—

(*a*) a creditor by assignment or otherwise to whom the company is indebted in a sum exceeding Fifty pounds then due has served on the company by

leaving at the registered office a demand under his hand, or under the hand of his agent thereunto lawfully authorized, requiring the company to pay the sum so due and the company has, for three weeks thereafter, neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor;

(*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

(*c*) it is proved to the satisfaction of the Court, which shall take into account the contingent and prospective liabilities of the company, that the company is unable to pay its debts.

Commencement of winding up by the Court.
U.K. s. 229.
N.S.W. s. 216.
Vic. s. 162.
Qld. ss. 180, 261.
S.A. s. 202.
W.A. s. 192.
Tas. s. 165.

223.—(1.) Where, before the presentation of the petition, a resolution has 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 shall be deemed to have commenced at the time of the presentation of the petition for the winding up.

As to payment of preliminary costs, &c.
Vic. s. 163.
Tas. s. 166.

224.—(1.) The persons, other than the company itself or the liquidator thereof, on whose petition any winding up order is made shall, at their own cost, prosecute all proceedings in the winding up until a liquidator has been appointed under this Part.

(2.) The liquidator shall, unless the Court orders otherwise, reimburse the petitioner out of the assets of the company the taxed costs incurred by the petitioner in any such proceedings.

(3.) Where the company has no assets or insufficient assets and, in the opinion of the Attorney-General, a fraud has been committed by any person in the promotion or formation of the company or by an officer of the company in relation to the company since its formation, the taxed costs or so much of them as is not so reimbursed may, with the approval in writing of the Attorney-General, to an extent specified by the Attorney-General but not in any case exceeding One hundred and fifty pounds, be reimbursed to the petitioner out of moneys provided by the Commonwealth for the purpose.

(4.) Where any winding up order is made upon the petition of the company or the liquidator thereof, the costs incurred shall, subject to any order of the Court, be paid out of the assets of the company in like manner as if they were the costs of any other petitioner.

Powers of Court on hearing petition.
U.K. s. 225.
N.S.W. s. 211.
Vic. s. 164.
Qld. s. 176.
S.A. s. 197.
W.A. s. 188.
Tas. s. 167.

225.—(1.) On hearing a winding up petition the Court may dismiss it with or without costs or adjourn the hearing conditionally or unconditionally or make any interim or other order that it thinks fit, but the Court shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets or that the company has no assets.

(2.) The Court may, on the petition coming on for hearing or at any time on the application of the petitioner, the company or any person who has given notice that he intends to appear on the hearing of the petition—

(*a*) direct that any notices be given or any steps taken before or after the hearing of the petition;

(*b*) dispense with any notices being given or steps being taken which are required by this Ordinance;

(*c*) direct that oral evidence be taken on the petition or any matter relating thereto;

(*d*) direct a speedy hearing or trial of the petition or any issue or matter;

(*e*) allow the petition to be amended or withdrawn; and

(*f*) give such directions as to the proceedings as the Court thinks fit.

(3.) Where the petition is presented by members as contributories on the ground that it is just and equitable that the company should be wound up or that the directors have acted in a manner which appears to be unfair or unjust to other members, the Court, if 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,

shall make a winding up order unless it is also 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.

(4.) Where the petition is presented on the ground of default in lodging the statutory report or in holding the statutory meeting, the Court may, instead of making a winding up order, direct that the statutory report shall be lodged or that a meeting shall be summoned, and may order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default.

Power to stay or restrain proceedings against company.
U.K. s. 226.
N.S.W. s. 212.
Vic. s. 165.
Qld. s. 177.
S.A. s. 198.
W.A. s. 189.
Tas. s. 168.

226. At any time after the presentation of a winding up petition and before a winding up order has been made, the company or any creditor or contributory may, where any action or proceeding against the company is pending, apply to the Court to stay or restrain further proceedings in the action or proceeding, and the Court may stay or restrain the proceedings accordingly on such terms as it thinks fit.

Avoidance of dispositions of property, &c.
U.K. s. 227.
N.S.W. s. 213.
Vic. s. 165.
Qld. s. 178.
S.A. s. 199.
W.A. s. 190.
Tas. s. 169.

227. Any disposition of the property of the company, including things in action, and any transfer of shares or alteration in the status of the members of the company made after the commencement of the winding up by the Court is, unless the Court otherwise orders, void.

Avoidance of certain attachments, &c.
U.K. s. 228.
N.S.W. s. 214.
Vic. s. 165.
Qld. s. 179.
S.A. s. 200.
W.A. s. 274.
Tas. s. 169.

228. Any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding up by the Court is void.

Petition to be *lis pendens*.
N.S.W. s. 215.
Vic. s. 165.
S.A. s. 201.
W.A. s. 191.
Tas. s. 170.

229. Any petition for winding up a company constitutes a *lis pendens* within the meaning of any law relating to the effect of a *lis pendens* upon purchasers or mortgagees.

Copy of order to be lodged, &c.
U.K. ss. 230–232.
N.S.W. ss. 217–219.
Vic. s. 166.
Qld. ss. 181–183.
S.A. ss. 203, 205.
W.A. ss. 193–195.
Tas. s.

230.—(1.) Within seven days after the making of a winding up order, the petitioner shall lodge with the Registrar notice in the prescribed form of—

(*a*) the order and its date; and

(*b*) the name and address of the liquidator.

(2.) On the passing and entering of the winding up order, the petitioner shall, within seven days—

(*a*) lodge an office copy of the order with the Registrar;

(*b*) cause a copy to be served upon the secretary or manager of the company or upon such other person or in such manner as the Court directs; and

(*c*) deliver a copy to the liquidator with a statement that the requirements of this sub-section have been complied with.

(3.) When a winding up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except—

(*a*) by leave of the Court; and

(*b*) in accordance with such terms as the Court imposes.

(4.) An order for winding up a company operates in favour of all the creditors and contributories of the company as if made on the joint petition of a creditor and of a contributory.

(5.) If default is made in complying with sub-section (1.) or sub-section (2.) of this section, the petitioner is guilty of an offence against this Ordinance.

Default penalty: Ten pounds.

Subdivision B.—Liquidators.

Appointment of official liquidator.

U.K. ss. 237–238. N.S.W. ss. 220–221. Vic. s. 167. Qld. ss. 185, 188. S.A. s. 206. W.A. s. 196. Tas. s. 172.

231.—(1.) On an order being made for the winding up of a company, the Court may appoint an official liquidator to be liquidator of the company.

(2.) The Court may appoint an official liquidator provisionally at any time after the presentation of a winding up petition and before the making of a winding up order, and the provisional liquidator has and may exercise all the functions and powers of a liquidator subject to such limitations and restrictions as may be prescribed by the rules or as the Court may specify in the order appointing him.

General provisions as to liquidators.

U.K. s. 242. N.S.W. s. 228. Vic. s. 170. Qld. ss. 194–198. S.A. s. 210. W.A. s. 200. Tas. s. 175.

232.—(1.) A liquidator appointed by the Court may resign or, on cause shown, be removed by the Court.

(2.) A provisional liquidator is entitled to receive such salary or remuneration by way of percentage or otherwise as is determined by the Court.

(3.) A liquidator is entitled to receive such salary or remuneration by way of percentage or otherwise as is determined—

(*a*) by agreement between the liquidator and the committee of inspection, if any;

(*b*) failing such agreement or where there is no committee of inspection, by a resolution passed at a meeting of creditors by a majority of not less than three-fourths in value and one-half in number of the creditors present in person or by proxy and voting at the meeting and whose debts have been admitted to proof, which meeting shall be convened by the liquidator by a notice to each creditor to which notice shall be attached a

statement of all receipts and expenditure by the liquidator and the amount of remuneration sought by him; or

(*c*) failing a determination in a manner referred to in paragraph (*a*) or (*b*) of this sub-section, by the Court.

(4.) Where the salary or remuneration of a liquidator is determined in the manner specified in paragraph (*a*) of the last preceding sub-section, the Court may, on the application of a member or members whose shareholding or shareholdings represents or represent in the aggregate not less than ten per centum of the issued capital of the company, confirm or vary the determination.

(5.) Where the salary or remuneration of a liquidator is determined in the manner specified in paragraph (*b*) of sub-section (3.) of this section, the Court may, on the application of the liquidator or a member or members referred to in the last preceding sub-section, confirm or vary the determination.

(6.) A vacancy in the office of a liquidator appointed by the Court shall be filled by the Court.

(7.) If more than one liquidator is appointed by the Court, the Court shall declare whether anything by this Ordinance required or authorized to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(8.) Subject to this Ordinance, the acts of a liquidator are valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

Custody and vesting of company's property.
U.K. ss. 243-244.
N.S.W. ss. 230, 299.
Vic. s. 171.
Qld. ss. 199-200.
S.A. ss. 211-212.
W.A. ss. 201-202.
Tas. s. 176.

233.—(1.) Where a winding up order has been made or a provisional liquidator has been appointed, the liquidator or provisional liquidator shall take into his custody or under his control all the property and things in action to which the company is or appears to be entitled, and, if there is no liquidator, all the property of the company shall be in the custody of the Court.

(2.) The Court may, on the application of the liquidator, by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator and thereupon the property to which the order relates shall vest accordingly, and the liquidator may, after giving such indemnity, if any, as the Court directs, bring or defend any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

(3.) Where an order is made under this section, every liquidator of a company in relation to which the order is made shall lodge within seven days of the making of the order—

(*a*) an office copy of the order with the Registrar; and

(*b*) where the order relates to land—an office copy of the order with the Registrar of Titles,

and a liquidator who makes default in complying with this section is guilty of an offence against this Ordinance.

Penalty: One hundred pounds.

Default penalty: Ten pounds.

(4.) An order made under this section that relates to land is not effective until—

(*a*) where the land is subject to the *Real Property Ordinance* 1925-1961—all entries which are necessary to give effect to such an order under that Ordinance have been made in the Register Book kept under that Ordinance; or

(*b*) where the land is not so subject—an office copy of the order has been registered under the *Registration of Deeds Ordinance* 1957.

Statement of company's affairs to be submitted to liquidator

U.K. s. 235. N.S.W. s. 222. Vic. s. 172. Qld. s. 186. S.A. s. 208. W.A. s. 198. Tas. s. 177

234.—(1.) There shall be made out, verified by statutory declaration in the prescribed form and manner and submitted to the liquidator a statement in the prescribed form as to the affairs of the company as at the date of the winding up order showing—

(*a*) the particulars of its assets, debts and liabilities;

(*b*) the names and addresses of its creditors;

(*c*) the securities held by them respectively;

(*d*) the dates when the securities were respectively given; and

(*e*) such further information as is prescribed or as the liquidator requires.

(2.) The statement shall be submitted by one or more of the persons who are, at the date of the winding up order, directors of the company, and by the secretary of the company, or by such of the persons hereinafter mentioned as the liquidator, subject to the direction of the Court, requires, that is to say, persons—

(*a*) who are or have been officers of the company;

(*b*) who have taken part in the formation of the company at any time within one year before the date of the winding up order; or

(*c*) who are or have been within that period officers of or in the employment of a corporation which is, or within that period was, an officer of the company to which the statement relates.

(3.) The statement shall be submitted within fourteen days after the date of the winding up order or within such extended time as the liquidator or the Court for special reasons specifies, and the liquidator shall, within seven days after its receipt, cause a certified copy of the statement to be filed with the Court and lodged with the Registrar.

(4.) A person making or concurring in making the statement required by this section may, subject to the rules, be allowed and be paid by the liquidator, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement as the liquidator considers reasonable subject to an appeal to the Court.

(5.) A person who, without reasonable excuse, makes default in complying with the requirements of this section is guilty of an offence against this Ordinance.

Penalty: Five hundred pounds or imprisonment for three months, or both.

Default penalty: Ten pounds.

Report by liquidator.
U.K. s. 236.
N.S.W. ss. 223–224.
Vic. s. 173.
Qld. s. 187.
S.A. s. 209.
W.A. s. 199.
Tas. s. 178.

235.—(1.) The liquidator shall, as soon as practicable after receipt of the statement of affairs, submit a preliminary report to the Court—

(*a*) as to the amount of capital issued, subscribed and paid up and the estimated amount of assets and liabilities;

(*b*) if the company has failed, as to the causes of the faiuure; 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 liquidator may also, if he thinks fit, make further reports stating the manner in which the company was formed and whether in his opinion any fraud has been committed or any material fact has been concealed by any person in its promotion or formation or by any officer in relation to the company since its formation, and specifying any other matter which in his opinion it is desirable to bring to the notice of the Court.

Powers of liquidator.
U.K. s. 245.
N.S.W. s. 231.
Vic. s. 174.
Qld. s. 201.
S.A. s. 213.
W.A. s. 203.
Tas. s. 179

236.—(1.) The liquidator may, with the authority either of the Court or of the committee of inspection—

(*a*) carry on the business of the company so far as is necessary for the beneficial winding up thereof, but the authority of the Court or committee is not necessary to so carry on the business during the four weeks next after the date of the winding up order;

(*b*) subject to the provisions of section two hundred and ninety-two of this Ordinance, pay any class of creditors in full;

(*c*) 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; and

(*d*) compromise any calls, liabilities to calls, debts, liabilities capable of resulting in debts and any claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the company and a contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as are agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

(2.) The liquidator may—

(*a*) bring or defend any action or other legal proceeding in the name and on behalf of the company;

(*b*) appoint a solicitor to assist him in his duties;

(*c*) sell the real and personal property and things in action of the company by public auction, public tender or private contract with power to transfer the whole thereof to any person or company or to sell the same in parcels;

(*d*) do all acts and execute in the name and on behalf of the company all deeds, receipts and other documents and for that purpose use when necessary the company's seal;

(*e*) subject to the *Bankruptcy Act* 1924-1960, prove in the bankruptcy of any contributory or debtor of the company or under any deed executed under that Act;

(*f*) draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company;

(*g*) raise on the security of the assets of the company any money requisite;

(*h*) take out letters of administration of the estate of a deceased contributory or debtor and do any other act necessary for obtaining payment of any money due from a contributory or debtor, or his estate, which cannot be conveniently done in the name of the company, and in all such cases the money due shall, for the purposes of enabling the liquidator to take out the letters of administration or recover the money, be deemed due to the liquidator himself;

(*i*) compromise any debt due to the company other than calls and liabilities for calls and other than a debt where the amount claimed by the company to be due to it exceeds Three hundred pounds;

(*j*) appoint an agent to do business which the liquidator is unable to do himself; and

(*k*) do all such other things as are necessary for winding up the affairs of the company and distributing its assets.

(3.) The exercise by the liquidator of the powers conferred by this section is subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

Exercise and control of liquidator's powers.

U.K. s. 246. N.S.W. s. 232. Vic. s. 175. Qld. s. 202. S.A. s. 214. W.A. s. 204. Tas. s. 180.

237.—(1.) Subject to this Part, the liquidator shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions given by resolution of the creditors or contributories at any general meeting or by the committee of inspection, and, in case of conflict, any directions so given by the creditors or contributories override any directions given by the committee of inspection.

(2.) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and he shall summon meetings at such times as the creditors or contributories by resolution direct or whenever requested in writing to do so by not less than one-tenth in value of the creditors or contributories.

(3.) The liquidator may apply to the Court for directions in relation to any particular matter arising under the winding up.

(4.) Subject to this Part, the liquidator shall use his own discretion in the management of the affairs and property of the company and the distribution of its assets.

Payment by liquidator into bank.
U.K. s. 248.
N.S.W. s. 234.
Vic. s. 177.
Qld. s. 204.
S.A. s. 216.
W.A. s. 206.
Tas. s. 182.

238.—(1.) A liquidator shall, in accordance with the rules, pay the moneys received by him as liquidator into such bank and account as are prescribed by the rules or specified by the Court.

(2.) If a liquidator retains for more than ten days a sum exceeding Twenty-five pounds, or exceeding such other amount as the Court in any particular case authorizes him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall pay interest at the rate of twenty per centum per annum on the amount so retained in excess computed from the expiration of the ten days until he has complied with the provisions of the last preceding sub-section, and is liable—

(*a*) to disallowance of all or such part of his remuneration as the Court thinks just;

(*b*) to be removed from his office by the Court; and

(*c*) to pay any expenses occasioned by reason of his default.

(3.) A liquidator who pays any moneys received by him as liquidator into any bank or account other than the bank or account prescribed or specified under sub-section (1.) of this section is guilty of an offence against this Ordinance.

Release of liquidators and dissolution of company.
U.K. ss. 251, 274.
N.S.W. ss. 237, 259.
Vic. ss. 180, 193.
Qld. ss. 207, 228.
S.A. s. 219 (1).
W.A. ss. 209, 230.
Tas. ss. 185, 203.

239. When the liquidator—

(*a*) has realized all the property of the company, or so much thereof as can in his opinion be realized without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors and adjusted the rights of the contributories among themselves and made a final return, if any, to the contributories; or

(*b*) has resigned or has been removed from his office,

he may apply to the Court—

(*c*) for an order that he be released; or

(*d*) for an order that he be released and that the company be dissolved.

As to orders for release or dissolution.
Vic. ss. 180, 193.
S.A. ss. 219, 241.

240.—(1.) Where an order is made that the company be dissolved, the company is, from the date of the order, dissolved accordingly.

(2.) The Court—

(*a*) may cause a report on the accounts of the liquidator to be prepared by the auditor appointed by the Registrar under section two hundred and eighty-one of this Ordinance or by some other registered company auditor appointed by the Court;

(*b*) on the liquidator complying with all the requirements of the Court—shall take into consideration the report and any objection which is urged by the auditor or by any creditor, contributory or other person interested against the release of the liquidator; and

(*c*) shall either grant or withhold the release accordingly.

(3.) Where the release of a liquidator is withheld, the Court may, on the application of any creditor, contributory or person interested, make such order as it thinks just charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

(4.) An order of the Court releasing the liquidator discharges him from all liability in respect of any act done or default made by him in the administration of the affairs of the company or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(5.) Where the liquidator has not previously resigned or been removed his release shall operate as a removal from office.

(6.) Where the Court has made—

(*a*) an order that the liquidator be released; or

(*b*) an order that the liquidator be released and that the company be dissolved,

an office copy of the order shall, within fourteen days after the making thereof, be lodged by the liquidator with the Registrar, and a liquidator who makes default in complying with the requirements of this sub-section is guilty of an offence against this Ordinance.

Penalty: One hundred pounds.

Default penalty: Ten pounds.

Subdivision C.—Committees of Inspection.

Meetings to determine whether committee of inspection to be appointed and powers of Court where no committee.

U.K. ss. 252, 254. N.S.W. ss. 238, 240. Vic. s. 181. Qld. s. 208. S.A. ss. 220, 222. W.A. ss. 210, 212. Tas. s. 186.

241.—(1.) The liquidator shall, if requested by a creditor or contributory, summon separate meetings of the creditors and contributories for the purpose of determining whether or not the creditors or contributories require the appointment of a committee of inspection to act with the liquidator and, if so, who are to be members of the committee.

(2.) If there is a difference between the determinations of the meeting of the creditors and the meeting of the contributories, the Court shall decide the difference and make such order as it thinks fit.

(3.) Where there is no committee of inspection, the Court may, on the application of the liquidator, do any act or thing or give any direction or permission which is by this Part authorized or required to be done or given by the committee.

Constitution and proceedings of committee of inspection.
U.K. s. 253.
N.S.W. s. 239.
Vic. s. 182.
Qld. s. 209.
S.A. s. 221.
W.A. s. 211.
Tas. s. 187.

242.—(1.) The committee of inspection shall consist of creditors and contributories of the company or persons holding—

(*a*) general powers of attorney from creditors or contributories; or

(*b*) special authorities from creditors or contributories authorizing the persons named therein to act on such a committee,

appointed by the meetings of creditors and contributories in such proportions as are agreed or, in case of difference, as are determined by the Court.

(2.) The committee shall meet at such times and places as its members from time to time appoint, and the liquidator or any member of the committee may also call a meeting of the committee as he thinks necessary.

(3.) The committee may act by a majority of its members present at a meeting, but shall not act unless a majority of its members is present.

(4.) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5.) If a member of a committee—

(*a*) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or

(*b*) is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be,

his office becomes vacant.

(6.) A member of the committee who represents creditors may be removed by an ordinary resolution at a meeting of creditors of which seven days' notice has been given stating the object of the meeting, and a member of the committee who represents contributories may be removed by an ordinary resolution at a meeting of contributories of which such notice has been given.

(7.) A vacancy in the committee may be filled by the appointment by the committee of the same or another creditor or contributory or person holding a general power or special authority as specified in sub-section (1.) of this section.

(8.) The liquidator may at any time of his own motion, and shall within seven days after the request in writing of a creditor or contributory, summon a meeting of creditors or of contributories, as the case requires, to consider any appointment made pursuant to the last preceding sub-section, and the meeting may confirm the appointment or revoke the appointment and appoint another creditor or contributory or person holding a general power or special authority as specified in sub-section (1.) of this section, as the case requires, in his stead.

(9.) The continuing members of the committee, if they are not less than two in number, may act notwithstanding any vacancy in the committee.

Subdivision D.—General Powers of Court.

Power to stay winding up.
U.K. s. 256.
N.S.W. s. 241.
Vic. s. 183.
Qld. s. 210.
S.A. s. 223.
W.A. s. 213.
Tas. s. 188.

243.—(1.) At any time after an order for winding up has been made, the Court may, on the application of the liquidator or of 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 such application the Court may, before making an order, require the liquidator to furnish a report with respect to any facts or matters which are in his opinion relevant.

(3.) An office copy of an order made under this section shall be lodged by the company with the Registrar within fourteen days after the making of the order.

Default penalty: Ten pounds.

Settlement of list of contributories and application of assets.
U.K. s. 257.
N.S.W. s. 242.
Vic. s. 184.
Qld. s. 211.
S.A. s. 224.
W.A. s. 214.
Tas. s. 189.

244.—(1.) As soon as may be after making a winding up order, the Court shall settle a list of contributories, and the Court may rectify the register of members in all cases where rectification is required in pursuance of this Part and shall cause the assets of the company to be collected and applied in discharge of its liabilities.

(2.) Notwithstanding the provisions of the last preceding sub-section, 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.

(3.) 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.

(4.) The list of contributories when settled is evidence of the liabilities of the persons named therein as contributories.

Delivery of property to liquidator, payment of debts due by contributory, &c.

U.K. ss. 258–262.
N.S.W. ss. 243–247.
Vic. s. 185.
Qld. ss. 212–216.
S.A. ss. 225–229.
W.A. ss. 215–219.
Tas. ss. 190–194.

245.—(1.) The Court may require any contributory, trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer to the liquidator or provisional liquidator forthwith or within such time as the Court directs any money, property, books and papers in his hands to which the company is *prima facie* entitled.

(2.) The Court may make an order directing any contributory for the time being on the list of contributories to pay to the company in the manner directed by the order any money due from him or from the estate of the person whom he represents, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Ordinance, and may—

(*a*) in the case of an unlimited company—allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract but not any money due to him as a member of the company in respect of any dividend or profit; and

(*b*) in the case of a limited company—make to any director whose liability is unlimited or to his estate the like allowance,

and, 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.

(3.) The Court may, either before or after it has ascertained the sufficiency of the assets of the company—

(*a*) make calls on all or any of the contributories for the time being on the list of contributories, to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the company and the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves; and

(*b*) make an order for payment of any calls so made,

and, in making a call, may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

(4.) The Court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into a bank named in such order to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

(5.) All moneys and securities paid or delivered into a bank pursuant to this Division are subject in all respects to orders of the Court.

(6.) An order made by the Court under this section is, subject to any right of appeal, conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due, and all other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings.

Appointment of special manager.
U.K. s. 263. N.S.W. s. 248. Vic. s. 186. Qld. s. 217. S.A. s. 230. W.A. s. 220. Tas. s. 195.

246.—(1.) The liquidator may, if 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, apply to the Court and the Court may appoint a special manager of the estate or business to act during such time as the Court directs with such powers, including any of the powers of a receiver or manager, as are entrusted to him by the Court.

(2.) The special manager—

(*a*) shall give such security and account in such manner as the Court directs;

(*b*) shall receive such remuneration as is fixed by the Court; and

(*c*) may at any time resign by notice in writing addressed to the liquidator or, on cause shown, be removed by the Court.

Claims of creditors and distribution of assets.
U.K. ss. 264–265, 267. N.S.W. ss. 249–250, 252. Vic. s. 187. Qld. ss. 218–219, 221. S.A. ss. 231–232, 234. W.A. ss. 221–222. Tas. s. 196.

247.—(1.) The Court may fix a date on or before which creditors are to prove their debts or claims or after which they will be excluded from the benefit of any distribution made before those debts are proved.

(2.) The Court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto.

(3.) The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the winding up in such order of priority as the Court thinks just.

248. The Court may make such order for inspection of the books and papers of the company by creditors and contributories as the Court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

Inspection of books by creditors and contributories.
U.K. s. 266.
N.S.W. s. 251.
Vic. s. 188.
Qld. s. 220.
S.A. s. 233.
W.A. s. 223.
Tas. s. 197.

249.—(1.) The Court may summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the Court deems capable of giving information concerning the promotion, formation, trade dealings, affairs or property of the company.

Power to summon persons connected with company.
U.K. s. 268.
N.S.W. s. 253.
Vic. s. 189.
Qld. s. 222.
S.A. s. 235.
W.A. s. 224.
Tas. s. 198.

(2.) The Court may examine him on oath concerning the matters mentioned in the last preceding sub-section, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them, and any writing so signed may be used in evidence in any legal proceedings against him.

(3.) The Court may require him to produce any books and papers in his custody or power relating to the company, but, where he claims any lien on books or papers, the production shall be without prejudice to that lien and the Court shall have jurisdiction to determine all questions relating to that lien.

(4.) An examination under this section or under section two hundred and fifty of this Ordinance may, if the Court so directs and subject to the rules, be held before a stipendiary magistrate empowered to exercise the jurisdiction of the Court of Petty Sessions, and the powers of the Court under this section and section two hundred and fifty of this Ordinance may be exercised by such stipendiary magistrate accordingly.

(5.) A person summoned before the Court or a stipendiary magistrate for examination under this section may, at his own cost, employ a solicitor with or without counsel, who shall be at liberty to put to him such questions as the Court or the magistrate deems just for the purpose of enabling him to explain or qualify any answers given by him.

(6.) If a person so summoned, after being tendered a reasonable sum for his expenses, fails to come before the Court or the stipendiary magistrate at the time appointed not having a lawful excuse made known to the Court or the magistrate at the time of its or his sitting and allowed by it or him, the Court may cause him to be apprehended and brought before the Court or the magistrate for examination.

Power to order public examination of promoters, directors, &c.

U.K. s. 270. N.S.W. s. 254. Vic. s. 190. Qld. s. 223. S.A. s. 236. W.A. s. 225. Tas. ss. 199-200.

250.—(1.) Where the liquidator has made a report under this Part stating that, in his opinion, a fraud has been committed or that any material fact has been concealed by a person in the promotion or formation of the company or by an officer in relation to the company since its formation, the Court may, after consideration of the report, direct that the person or officer, or any other person who was previously an officer of the company (including any banker, solicitor or auditor), or who is known or suspected to have in his possession any property of the company or is supposed to be indebted to the company, or any person whom the Court deems capable of giving information concerning the promotion, formation, trade dealings, affairs or property of the company, shall attend before the Court on a day appointed and be publicly examined as to the promotion or formation, or the conduct of the business, of the company or, in the case of an officer or former officer, as to his conduct and dealings as an officer thereof.

(2.) The liquidator and any creditor or contributory may take part in the examination either personally or by solicitor or counsel.

(3.) The Court may put or allow to be put such questions to the person examined as the Court thinks fit.

(4.) The person examined shall be examined on oath and shall answer all such questions as the Court puts or allows to be put to him.

(5.) A person ordered to be examined under this section—

(*a*) shall, before his examination, be furnished with a copy of the liquidator's report; and

(*b*) may, at his own cost, employ a solicitor with or without counsel, who shall be at liberty to put to him such questions as the Court deems just for the purpose of enabling him to explain or qualify any answers given by him.

(6.) Where a person directed to attend before the Court under sub-section (1.) of this section applies to the Court to be exculpated from any charges made or suggested against him, the liquidator shall appear on the hearing of the application and call the attention of the Court to any matters which appear to him to be relevant and, if the Court, after hearing any evidence given or witnesses called by the liquidator, grants the application, the Court may allow the applicant such costs as in its discretion it thinks fit.

(7.) Notes of the examination—

(*a*) shall be reduced to writing;

(*b*) shall be read over to or by and signed by the person examined;

(*c*) may thereafter be used in evidence in any legal proceedings against him; and

(*d*) shall be open to the inspection of any creditor or contributory at all reasonable times.

(8.) The Court may, if it thinks fit, adjourn the examination from time to time.

Power to arrest absconding contributory.
U.K. s. 271.
N.S.W. s. 256.
Vic. s. 191.
Qld. s. 225.
S.A. s. 238.
W.A. s. 227.
Tas. s. 201.

251. The Court, at any time before or after making a winding up order, on proof of probable cause for believing that a contributory is about to quit the Territory or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested and his books and papers and movable personal property to be seized and him and them to be safely kept until such time as the Court orders.

Delegation to liquidator of certain powers of Court.
U.K. s. 273.
N.S.W. s. 257.
Vic. s. 192.
Qld. s. 227.
S.A. s. 240.
W.A. s. 229.
Tas. s. 202.

252. Provision may be made by order of the Court for enabling or requiring all or any of the powers and duties conferred and imposed on the Court by this Part in respect of—

(*a*) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;

(*b*) the settling of lists of contributories, 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 making of calls and the adjusting of the rights of contributories; and

(*e*) the fixing of a time within which debts and claims must be proved,

to be exercised or performed by the liquidator as an officer of the Court and subject to the control of the Court, but the liquidator shall not, without 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.

Powers of Court cumulative.
U.K. ss. 272, 277.
N.S.W. s. 257.
Vic. s. 194.
Qld. ss. 226, 230.
S.A. ss. 239, 376.
W.A. s. 228.
Tas. ss. 204–205.

253. Any powers by this Ordinance conferred on the Court are in addition to and not in derogation of any existing powers of instituting proceedings against any contributory or debtor of the company or the estate of any contributory or debtor for the recovery of any call or other sums.

Division 3.—Voluntary Winding Up.

Subdivision A.—Introductory.

Circumstances in which company may be wound up voluntarily.
U.K. ss. 278–279.
N.S.W. ss. 260–261.
Vic. s. 195.
Qld. ss. 231, 234.
S.A. ss. 242–243.
W.A. s. 231.
Tas. s. 206.

254.—(1.) A company may be wound up voluntarily if the company so resolves by special resolution.

(2.) A company shall—

(*a*) within seven days after the passing of a resolution for voluntary winding up, lodge with the Registrar notice in the prescribed form of the passing of the resolution and a printed copy of the resolution; and

(*b*) within fourteen days after the passing of the resolution give notice of the resolution in the *Gazette*.

(3.) If the company fails to comply with the provisions of the last preceding sub-section, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Default penalty: Ten pounds.

Commencement of winding up.
U.K. s. 280.
N.S.W. s. 262.
Vic. s. 196.
Qld. s. 233.
S.A. s. 244.
W.A. s. 233.
Tas. s. 207.

255. A voluntary winding up commences at the time of the passing of the resolution for voluntary winding up.

Effect of voluntary winding up.
U.K. ss. 281–282.
N.S.W. ss. 263–264.
Vic. s. 197.
Qld. ss. 232–235.
S.A. ss. 245–246.
W.A. ss. 234–235.
Tas. s. 208.

256.—(1.) The company shall, from the commencement of the winding up, cease to carry on its business except so far as is in the opinion of the liquidator required for the beneficial winding up thereof, but the corporate state and corporate powers of the company, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

(2.) Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members, made after the commencement of the winding up is void.

Declaration of solvency.
U.K. s. 283.
N.S.W. s. 265.
Vic. s. 198.
Qld. s. 236.
S.A. s. 247.
W.A. s. 236.
Tas. s. 209.

257.—(1.) Where it is proposed to wind up a company voluntarily, the directors of the company, or, in the case of a company having more than two directors, the majority of the directors, may, before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out, make a written declaration in the prescribed form to the effect that they have made an inquiry into the affairs of the company and that, at a meeting of directors, have formed the opinion that the company will be able to pay its debts in full within a period not exceeding twelve months after the commencement of the winding up.

(2.) There shall be attached to the declaration a statement of affairs of the company showing, in the prescribed form—

(*a*) the assets of the company and the total amount expected to be realized therefrom;

(*b*) the liabilities of the company; and

(*c*) the estimated expenses of winding up,

made up to the latest practicable date before the making of the declaration.

(3.) A declaration so made has no effect for the purposes of this Ordinance unless it is—

(*a*) made at the meeting of directors referred to in sub-section (1.) of this section;

(*b*) made within five weeks immediately preceding the passing of the resolution for voluntary winding up; and

(*c*) lodged with the Registrar before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out.

(4.) A director who makes a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period stated in the declaration is guilty of an offence against this Ordinance.

Penalty: Five hundred pounds or imprisonment for six months, or both.

(5.) If the company is wound up in pursuance of a resolution for voluntary winding up passed within a period of five weeks after the making of the declaration but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed until the contrary is shown that the director did not have reasonable grounds for his opinion.

Subdivision B.—Provisions applicable only to Members' Voluntary Winding Up.

Liquidators.
U.K. ss. 285–286.
N.S.W. ss. 267–268.
Vic. s. 199.
Qld. ss. 238–239.
S.A. ss. 249–250.
W.A. ss. 238–239.
Tas. s. 210.

258.—(1.) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company and may fix the remuneration to be paid to him or them.

(2.) On the appointment of a liquidator, all the powers of the directors cease except so far as the liquidator or the company in general meeting with the consent of the liquidator approves the continuance thereof.

(3.) If a vacancy occurs by death, resignation or otherwise in the office of liquidator, the company in general meeting may fill the vacancy by the appointment of a liquidator and fix the remuneration to be paid to him and, for that purpose, a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(4.) The meeting shall be held in manner provided by this Ordinance or by the articles or in such manner as is, on application by any contributory or by the continuing liquidators, determined by the Court.

Duty of liquidator to call creditors' meeting in case of insolvency.
U.K. ss. 288, 291.
Vic. s. 200.
Qld. s. 236.
Tas. s. 211.

259.—(1.) If the liquidator is at any time of the opinion that the company will not be able to pay or provide for the payment of its debts in full within the period stated in the declaration made under section two hundred and fifty-seven of this Ordinance, he shall forthwith summon a meeting of the creditors by notice in the prescribed form and lay before the meeting a statement of the assets and liabilities of the company.

(2.) The creditors may, at the meeting summoned under the last preceding sub-section, appoint some other person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company instead of the liquidator appointed by the company.

(3.) If the creditors appoint some other person under the last preceding sub-section, the winding up shall thereafter proceed as if the winding up were a creditors' voluntary winding up.

(4.) The person so appointed shall, within seven days after a meeting has been held pursuant to the provisions of sub-section (1.) of this section, lodge with the Registrar a notice in the

prescribed form and, if default is made in complying with this sub-section, that person is guilty of an offence against this Ordinance.

Penalty: One hundred pounds.

Default penalty: Ten pounds.

(5.) Where the liquidator has convened a meeting under sub-section (1.) of this section and the creditors do not appoint a liquidator instead of the liquidator appointed by the company, the winding up shall thereafter proceed as if the winding up were a creditors' voluntary winding up, but the liquidator is not required to summon an annual meeting of creditors at the end of the first year from the commencement of the winding up if the meeting held under sub-section (1.) of this section was held less than three months before the end of that year.

Subdivision C.—Provisions applicable only to Creditors' Voluntary Winding Up.

Meeting of creditors.
U.K. s. 293.
N.S.W. s. 273.
Vic. s. 201.
Qld. s. 244.
S.A. s. 255.
W.A. s. 244.
Tas. s. 212.

260.—(1.) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for the voluntary winding up is to be proposed and shall cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company.

(2.) The company shall convene the meeting at a time and place convenient to the majority in value of the creditors and shall—

(*a*) give to the creditors at least seven days' notice by post of the meeting; and

(*b*) send to each creditor with the notice a statement showing the names of all creditors and the amounts of their claims.

(3.) The company shall cause notice of the meeting of the creditors to be advertised at least seven days before the date of the meeting in the *Gazette* and in a daily newspaper published in the Territory.

(4.) The directors of the company shall—

(*a*) cause a statement in the prescribed form of the company's affairs, showing in respect of assets the method and manner in which the valuation of

the assets was arrived at, together with a list of the creditors and the estimated amount of their claims, to be laid before the meeting of creditors; and

(*b*) appoint one of their number to attend the meeting.

(5.) The director so appointed and the secretary shall attend the meeting and disclose to the meeting the company's affairs and the circumstances leading up to the proposed winding up.

(6.) The creditors may appoint one of their number or the director appointed under sub-section (4.) of this section to preside at the meeting.

(7.) The chairman shall, at the meeting, determine whether the meeting has been held at a time and place convenient to the majority in value of the creditors and his decision is final.

(8.) If the chairman decides that the meeting has not been held at a time and place convenient to that majority, the meeting shall lapse and a further meeting shall be summoned by the company as soon as is practicable.

(9.) If the meeting of the company is adjourned and the resolution for winding up is passed at an adjourned meeting, any resolution passed at the meeting of the creditors has effect as if it had been passed immediately after the passing of the resolution for winding up.

(10.) If default is made in complying with this section, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Penalty: One hundred pounds.

Liquidators.
U.K. ss. 294, 296–297.
N.S.W. s. 274.
Vic. s. 202.
Qld. ss. 245, 247–248.
W.A. s. 245.
Tas. s. 213.

261.—(1.) The company shall, and the creditors may at their respective meetings, nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company and, if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator but, if no person is nominated by the creditors, the person nominated by the company shall be liquidator.

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

(3.) The committee of inspection, or, if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator.

(4.) On the appointment of a liquidator, the powers of the directors cease except so far as the committee of inspection, or, if there is no such committee, the creditors, approve the continuance thereof.

(5.) If a liquidator, other than a liquidator appointed by or by the direction of the Court, dies, resigns or otherwise vacates his office, the creditors may fill the vacancy and, for the purpose of so doing, a meeting of the creditors may be summoned by any two of their number.

Committee of inspection.
U.K. s. 295.
N.S.W. s. 275.
Vic. s. 203.
Qld. s. 246.
S.A. s. 257.
W.A. s. 246.
Tas. s. 214.

262.—(1.) The creditors at the meeting summoned pursuant to section two hundred and fifty-nine or section two hundred and sixty of this Ordinance, or at any subsequent meeting, may, if they think fit, appoint a committee of inspection consisting of not more than five persons (whether creditors or not) and, if such a committee is appointed, the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons not exceeding five as it thinks fit to act as members of the committee.

(2.) Notwithstanding the provisions of the last preceding sub-section, the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection and, if the creditors so resolve, the persons mentioned in the resolution are not, unless the Court otherwise directs, qualified to act as members of the committee, and, on any application to the Court under this sub-section, the Court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(3.) Subject to this section and the rules, the provisions of Subdivision C of Division 2 of this Part relating to the proceedings of and vacancies in committees of inspection apply with respect to a committee of inspection appointed under this section.

Property and proceedings.
Vic. s. 204.
Qld. ss. 177, 179, 212.
W.A. s. 274.
Tas. s. 215.

263.—(1.) Any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of a creditors' voluntary winding up is void.

(2.) After the commencement of the winding up, no action or proceeding shall be proceeded with or commenced against the company except by leave of the Court and subject to such terms as the Court imposes.

(3.) The Court may require any contributory, 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, books or papers in his hands to which the company is *prima facie* entitled.

Subdivision D.—Provisions applicable to every Voluntary Winding Up.

Distribution of property of company.
U.K. s. 302.
N.S.W. s. 282.
Vic. s. 205.
Qld. s. 253.
S.A. s. 264.
W.A. s. 253.
Tas. s. 216.

264. Subject to the provisions of this Ordinance as to preferential payments, the property of the company shall, on its winding up, be applied in satisfaction of its liabilities equally and, subject to that application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

Appointment of liquidator.
U.K. s. 304.
N.S.W. s. 284.
Vic. s. 206.
Qld. s. 255.
S.A. s. 266.
W.A. s. 255.
Tas. s. 217.

265. If from any cause there is no liquidator acting, the Court may appoint a liquidator.

Removal of liquidator.
Vic. s. 206.
Qld. s. 255.
Tas. s. 217.

266. The Court may, on cause shown, remove a liquidator and appoint another liquidator.

Review of liquidator's remuneration.
N.S.W. s. 311.
Vic. s. 206.
Tas. s. 217.

267. A member or creditor, or the liquidator, may at any time before the dissolution of the company apply to the Court to review the amount of the remuneration of the liquidator, and the decision of the Court is final and conclusive.

Act of liquidator valid, &c.

268.—(1.) The acts of a liquidator are valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

(2.) A conveyance, assignment, transfer, mortgage, charge or other disposition of a company's property made by a liquidator is, notwithstanding any defect or irregularity affecting the validity of the winding up or the appointment of the liquidator, valid in favour of any person taking such property *bona fide* and for value and without notice of such defect or irregularity.

(3.) Every person making or permitting any disposition of property to a liquidator shall be protected and indemnified in

so doing notwithstanding any defect or irregularity affecting the validity of the winding up or the appointment of the liquidator not then known to such person.

(4.) For the purposes of this section, a disposition of property shall be taken as including a payment of money.

Powers and duties of liquidator.
U.K. s. 303.
N.S.W. s. 283.
Vic. s. 207.
Qld. s. 254.
S.A. s. 265.
W.A. s. 254.
Tas. s. 218.

269.—(1.) The liquidator may—

(*a*) in the case of a members' voluntary winding up, with the approval of a special resolution of the company or, in the case of a creditors' voluntary winding up, with the approval of the Court or the committee of inspection or, if there is no such committee, a meeting of creditors, exercise any of the powers given by paragraphs (*b*), (*c*) and (*d*) of sub-section (1.) of section two hundred and thirty-six of this Ordinance to a liquidator in a winding up by the Court;

(*b*) exercise any of the other powers of this Ordinance given to the liquidator in a winding up by the Court;

(*c*) exercise the powers of the Court under this Ordinance of settling a list of contributories, and the list of contributories shall be evidence of the liability of the persons named therein to be contributories;

(*d*) exercise the power of the Court of making calls; or

(*e*) summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution in respect of any matter or for any other purpose he thinks fit.

(2.) The liquidator shall pay the debts of the company and adjust the rights of the contributories among themselves.

(3.) When several liquidators are appointed, any power given by this Ordinance may be exercised by such one or more of them as is determined at the time of their appointment or, in default of such determination, by any number not less than two.

Power of liquidator to accept shares, &c., as consideration for sale of property of company.
U.K. ss. 287, 298.
N.S.W. s. 269.
Vic. s. 208.
Qld. ss. 240, 249.
S.A. s. 251.
W.A. ss. 240, 249.
Tas. s. 219.

270.—(1.) Where it is proposed that the whole or part of the business or property of a company (in this section called "the company") be transferred or sold to another corporation (in this section called "the corporation"), the liquidator of the company may, with the sanction of a special resolution of the company conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transfer or sale shares, debentures, policies or other like interests in the corporation for distribution among the members of the company or may enter into any other arrangement whereby the members

of the company may, in lieu of receiving cash, shares, debentures, policies or other like interests or in addition thereto, participate in the profits of or receive any other benefit from the corporation, and any such transfer, sale or arrangement is binding on the members of the company.

(2.) If any member of the company who did not vote in favour of the special resolution expresses his dissent therefrom in writing addressed to the liquidator and left at the office of the liquidator within seven days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration in manner provided by this section.

(3.) If the liquidator elects to purchase the member's interest, the purchase money shall be paid before the company is dissolved and be raised by the liquidator in such manner as is determined by special resolution.

(4.) A special resolution is not invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators but, if an order for winding up the company by the Court is made within a year after the passing of the resolution, the resolution is not valid unless sanctioned by the Court.

(5.) For the purposes of an arbitration under this section, the Arbitration Act, 1902 of the State of New South Wales, in its application in the Territory, applies as if there were a submission for reference to two arbitrators, one to be appointed by each party, and the appointment of an arbitrator may be made under the hand of the liquidator or, if there is more than one liquidator, under the hands of any two or more of the liquidators, and the Court may give any directions necessary for the initiation and conduct of the arbitration and such direction is binding on the parties.

(6.) In the case of a creditors' voluntary winding up, the powers of the liquidator under this section shall not be exercised except with the approval of the Court or the committee of inspection.

Annual meeting of creditors.
U.K. ss. 289–299.
N.S.W. ss. 270, 279.
Vic. s. 209.
Qld. s. 241.
S.A. s. 252.
W.A. s. 250.
Tas. s. 220.

271.—(1.) If the winding up continues for more than one year, the liquidator shall summon a general meeting of the company in the case of a members' voluntary winding up, and of the company and the creditors in the case of a creditors' voluntary winding up, at the end of the first year from the commencement of the winding up and of each succeeding year or not more than three months thereafter, 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.) The liquidator shall cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company.

(3.) A liquidator who fails to comply with this section is guilty of an offence against this Ordinance.

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

Final meeting and dissolution.
U.K. ss. 290, 300.
N.S.W. ss. 271, 280.
Vic. s. 210.
Qld. s. 242.
S.A. s. 253.
W.A. s. 251.
Tas. s. 221.

272.—(1.) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon he shall call a general meeting of the company, or, in the case of a creditors' voluntary winding up, a meeting of the company and the creditors, for the purpose of laying before it the account and giving any explanation thereof.

(2.) The meeting shall be called by advertisement published in the *Gazette* and in a daily newspaper published in the Territory, and the advertisement shall specify the time, place and object of the meeting and shall be published one month at least before the meeting.

(3.) The liquidator shall, within seven days after the meeting, lodge with the Registrar a return in the prescribed form of the holding of the meeting and of its date with a copy of the account attached to such return and, if the return or copy of the account is not so lodged, the liquidator is guilty of an offence against this Ordinance.

Default penalty: Ten pounds.

(4.) At a meeting of the company, two members constitute a quorum and, at a meeting of the company and of the creditors, two members and two creditors constitute a quorum and, if a quorum is not present at the meeting, the liquidator shall, in lieu of the return mentioned in the last preceding sub-section, lodge a return in the prescribed form (with account attached) that the meeting was duly summoned and that no quorum was present thereat, and, upon such a return being lodged, the provisions of that sub-section as to the lodging of the return shall be deemed to have been complied with.

(5.) On the expiration of three months after the lodging of the return with the Registrar, the dissolution of the company takes effect.

(6.) Notwithstanding the provisions of the last preceding sub-section, 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.

(7.) The person on whose application an order of the Court under this section is made shall, within fourteen days after the making of the order, lodge with the Registrar an office copy of the order and, if he fails so to do, he is guilty of an offence against this Ordinance.

Default penalty: Ten pounds.

(8.) If the liquidator fails to call a meeting as required by this section, he is guilty of an offence against this Ordinance.

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

Arrangement when binding on creditors.
U.K. s. 306.
N.S.W. s. 285.
Vic. s. 211.
Qld. s. 257.
S.A. s. 268.
W.A. s. 257.
Tas. s. 222.

273.—(1.) An arrangement entered into between a company about to be or in the course of being wound up and its creditors is, subject to the right of appeal under this section, binding on the company if sanctioned by a special resolution, and on the creditors if acceded to by three-fourths in value and one-half in number of the creditors, every creditor for under Ten pounds being reckoned in value only.

(2.) A creditor shall be accounted a creditor for value for such sum as upon an account fairly stated, after allowing the value of security or liens held by him and the amount of any debt or set-off owing by him to the debtor, appears to be the balance due to him.

(3.) A dispute with regard to the value of any such security or lien, or the amount of such debt or set-off, may be settled by the Court on the application of the company, the liquidator or the creditor.

(4.) A creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the Court against it, and the Court may thereupon as it thinks just amend, vary or confirm the arrangement.

Application to Court to have questions determined or powers exercised.
U.K. s. 307.
N.S.W. s. 286.
Vic. s. 212.
S.A. s. 269.
Qld. s. 258.
Tas. s. 223.

274.—(1.) The liquidator, or any contributory or creditor, may apply to the Court—

(*a*) to determine any question arising in the winding up of a company; or

(*b*) to exercise all or any of the powers which the Court might exercise if the company were being wound up by the Court.

(2.) The Court, if satisfied that the determination of the question or the exercise of power will be just and beneficial, may accede wholly or partially to any such application on such terms and conditions as it thinks fit or may make such other order on the application as it thinks just.

275. All proper costs, charges and expenses of and incidental to the winding up (including the remuneration of the liquidator) are payable out of the assets of the company in priority to all other claims.

Costs.
U.K. s. 309.
N.S.W. s. 287
Vic. s. 213.
Qld. s. 259.
S.A. s. 270.
W.A. s. 259.
Tas. s. 224.

276. Where a petition has been presented to the Court to wind up a company on the ground that it is unable to pay its debts, the company shall not without the leave of the Court resolve that it be wound up voluntarily.

Limitation on right to wind up voluntarily.

Division 4.—Provisions Applicable to Every Mode of Winding Up.

Subdivision A.—General.

277. A liquidator shall keep proper books in which he shall cause to be made entries or minutes of proceedings at meetings and of such other matters as are prescribed, and any creditor or contributory may, subject to the control of the Court, personally or by his agent inspect them.

Books to be kept by liquidator.
U.K. s. 247.
N.S.W. s. 233.
Vic. s. 176.
Qld. s. 203.
S.A. s. 215.
W.A. s. 205.
Tas. s. 181.

278.—(1.) The Court shall take cognizance of the conduct of liquidators and, if a liquidator does not faithfully perform his duties and observe the prescribed requirements, the requirements of the rules or the requirements of the Court or if any complaint is made to the Court by any creditor or contributory or by the Board in regard thereto, the Court shall inquire into the matter and take such action as it thinks fit.

Control of Court over liquidators.
U.K. s. 250.
N.S.W. ss. 235, 236.
Vic. s. 179.
Qld. s. 206.
S.A. s. 218.
W.A. s. 208.
Tas. s. 184

(2.) The Registrar or the Board may report to the Court any matter which in his or its opinion is a misfeasance, neglect or omission on the part of the liquidator and the Court may order the liquidator to make good any loss which the estate of the company has sustained thereby and make such other order as it thinks fit.

(3.) The Court may at any time require a liquidator to answer any inquiry in relation to the winding up and may examine him or any other person on oath concerning the winding up and may direct an investigation to be made of the books and vouchers of the liquidator.

279. A person aggrieved by any act or decision of the liquidator may apply to the Court, which may confirm, reverse or modify the act or decision complained of and make such order as it thinks just.

Appeal against decision of liquidator.
Vic. s. 175 (5).

Notice of appointment and address of liquidator.
U.K. s. 305.
N.S.W. s. 294.
Vic. s. 206.
Qld. s. 256.
S.A. s. 267.
W.A. s. 256.
Tas. s. 217.

280.—(1.) A liquidator shall, within fourteen days after his appointment, lodge with the Registrar notice in the prescribed form of his appointment and of the situation of his office and, in the event of any change in the situation of his office, shall, within fourteen days after the change, lodge with the Registrar notice in the prescribed form of the change.

(2.) A liquidator shall, within fourteen days after his resignation or removal from office, lodge with the Registrar notice thereof in the prescribed form.

(3.) If a liquidator fails to comply with any provision of this section, he is guilty of an offence against this Ordinance.

Default penalty: Ten pounds.

Liquidator's accounts.
U.K. s. 249.
N.S.W. s. 316.
Vic. ss. 178, 232.
Qld. s. 205.
S.A. s. 217.
W.A. s. 207.
Tas. s. 183.

281.—(1.) A liquidator shall, within one month after the expiration of the period of six months from the date of his appointment and of every subsequent period of six months and, in any case, within one month after he ceases to act as liquidator and forthwith after obtaining an order of release, lodge with the Registrar in the prescribed form an account of his receipts and payments and a statement of the position in the winding up, together with a statutory declaration by the liquidator in the prescribed form.

Default penalty: Ten pounds.

(2.) The Registrar may cause the account to be audited by a registered company auditor and, for the purpose of the audit, the liquidator shall furnish the auditor with such vouchers and information as he requires, and the auditor may at any time require the production of and inspect any books or accounts kept by the liquidator.

(3.) A copy of the account or, if the account is audited, a copy of the audited account shall be kept by the liquidator and the copy shall be open to the inspection of any creditor or of any person interested at the office of the liquidator.

(4.) The liquidator shall—

(*a*) give notice that the account has been made up to every creditor and contributory when he next forwards any report, notice of meeting, notice of call or dividend; and

(*b*) in such notice, inform creditors and contributories at what address and between what hours the account may be inspected.

(5.) The costs of an audit under this section shall be fixed by the Board and are part of the expenses of winding up.

Liquidator to make good defaults.
U.K. s. 337.
N.S.W. s. 312.
Vic. s. 229.
Qld. s. 288.
S.A. s. 294.
W.A. s. 285.
Tas. s. 240.

282.—(1.) If a liquidator who has made any default in lodging or making any application, return, account or other document, or in giving any notice which he is by law required to lodge, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so, the Court may, on the application of any contributory or creditor of the company or the Registrar, make an order directing the liquidator to make good the default within such time as is specified in the order.

(2.) An order made under the last preceding sub-section may provide that all costs of and incidental to the application shall be borne by the liquidator.

(3.) Nothing in sub-section (1.)of this section prejudices the operation of any law imposing penalties on a liquidator in respect of any default.

Notification that a company is in liquidation.
U.K. s. 338.
N.S.W. s. 313.
Vic. s. 230.
Qld. s. 289.
S.A. s. 205.
W.A. s. 286.
Tas. s. 241.

283.—(1.) Where a company is being wound up, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall have the words " In liquidation " added after the name of the company where it first appears therein.

(2.) If default is made in complying with this section, the company, and each officer of the company, liquidator or receiver or manager who knowingly authorizes or permits the default, is guilty of an offence against this Ordinance.

Penalty: Twenty pounds.

Books of company.
U.K. ss. 340–341.
N.S.W. ss. 314–315.
Vic. s. 231.
Qld. ss. 290, 291.
S.A. ss. 296–297.
W.A. ss. 287–288.
Tas. s. 242.

284.—(1.) Where a company is being wound up, all books and papers of the company and of the liquidator that are relevant to the affairs of the company at or subsequent to the commencement of the winding up of the company are, as between the contributories of the company, evidence of the truth of all matters purporting to be therein recorded.

(2.) When a company has been wound up, the liquidator shall retain the books and papers referred to in the last preceding sub-section for a period of five years from the date of dissolution of the company and, at the expiration of that period, may destroy them.

Penalty: One hundred pounds.

(3.) Notwithstanding the last preceding sub-section, when a company has been wound up, the books and papers referred to in sub-section (1.) of this section may be destroyed within a period of five years after the dissolution of the company—

(*a*) in the case of a winding up by the Court—in accordance with the directions of the Court;

(*b*) in the case of a members' voluntary winding up—as the company by resolution directs; and

(*c*) in the case of a creditors' voluntary winding up—as the committee of inspection directs or, if there is no such committee, as the creditors of the company direct.

(4.) No responsibility rests on the company or the liquidator by reason of any such book or paper not being forthcoming to any person claiming to be interested therein if such book or paper has been destroyed in accordance with the provisions of this section.

Investment of surplus funds on general account.
U.K. s. 361.
Vic. s. 233.
Tas. s. 244.

285.—(1.) Whenever the cash balance standing to the credit of a company in liquidation is in excess of the amount which, in the opinion of the committee of inspection, or, if there is no committee of inspection, of the liquidator, is required for the time being to answer demands in respect of the estate of the company, the liquidator, if so directed in writing by the committee of inspection, or, if there is no committee of inspection, the liquidator himself, may, unless the Court on application by any creditor thinks fit to direct otherwise and so orders, invest the sum or any part thereof in securities of the Government of the Commonwealth or of a State or place it on deposit at interest with any bank, and any interest received in respect thereof shall form part of the assets of the company.

(2.) Whenever any part of the money so invested is, in the opinion of the committee of inspection, or, if there is no committee of inspection, of the liquidator, required to answer any demands in respect of the company's estate, the committee of inspection may direct, or, if there is no committee of inspection, the liquidator may arrange for, the sale or realization of such part of such securities as is necessary.

Unclaimed assets.
U.K. s. 343
N.S.W. s. 317.
Vic. s. 234.
Qld. s. 293.
S.A. s. 299.
W.A. s. 290.
Tas. s. 245.

286. Where a liquidator has in his hands or under his control—

(*a*) any amount being a dividend or moneys which have remained unclaimed for more than six months from the date when the dividend or moneys became payable; or

(*b*) after making a final distribution, any unclaimed or undistributed amount arising from the property of the company,

the provisions of Part II. of the *Companies (Unclaimed Assets and Moneys) Ordinance* 1950-1962 apply to and in relation to that amount.

287.—(1.) Unless expressly directed to do so by the Registrar, a liquidator is not liable to incur any expense in relation to the winding up of a company unless there are sufficient available assets.

Expenses of winding up where assets insufficient.
N.S.W. s. 316.
Vic. s. 235.
S.A. s. 383.
Tas. s. 246.

(2.) The Registrar may, on the application of a creditor or a contributory, direct a liquidator to incur a particular expense on condition that the creditor or contributory indemnifies the liquidator in respect of the recovery of the amount expended and, if the Registrar so directs, gives such security to secure the amount of the indemnity as the Registrar thinks reasonable.

288. Subject to sub-section (9.) of section two hundred and sixty of this Ordinance, where a resolution is passed at an adjourned meeting of any creditors or contributories of a company, the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed and not on any earlier date.

Resolutions passed at adjourned meetings of creditors and contributories.
U.K. s. 345.
N.S.W. s. 318.
Vic. s. 236.
Qld. s. 294.
S.A. s. 300.
W.A. s. 291.
Tas. s. 247.

289.—(1.) The Court may, as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence and may, if it thinks fit for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be summoned, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the Court.

Meetings to ascertain wishes of creditors or contributories.
U.K. s. 346.
N.S.W. s. 319.
Vic. s. 237.
Qld. s. 295.
S.A. s. 301.
W.A. s. 292.
Tas. s. 248.

(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 Ordinance or the articles.

290.—(1.) A stipendiary magistrate empowered to exercise the jurisdiction of the Court of Petty Sessions shall be a commissioner for the purpose of taking evidence under this Part, and the Court may refer the whole or any part of the examination of any witnesses under this Part to such a commissioner.

Special *commission* for receiving evidence.
U.K. s. 348.
Vic. s. 238.
S.A. s. 302.
W.A. s. 293.
Tas. s. 249.

(2.) A commissioner has, for the purposes of summoning and examining witnesses, requiring the production or delivery of documents, punishing defaults by witnesses and allowing costs and expenses to witnesses, the same powers as a stipendiary magistrate exercising the jurisdiction of the Court of Petty Sessions.

(3.) Unless otherwise ordered by the Court, the taking of evidence by a commissioner shall be open to the public.

(4.) The examination so taken shall be returned or reported to the Court in such manner as the Court directs.

Subdivision B.—Proof and Ranking of Claims.

Proof of debts.
U.K. ss. 316–317.
N.S.W. ss. 295–296.
Vic. s. 215.
Qld. ss. 270, 272.
S.A. ss. 277–278.
W.A. ss. 268–269.
Tas. s. 226.

291.—(1.) In every winding up, subject in the case of insolvent companies to the application in accordance with the provisions of this Ordinance of the law of the Commonwealth relating to bankruptcy, all debts payable on a contingency and all claims against the company (present or future, certain or contingent, ascertained or sounding only in damages) are admissible to proof against the company, a just estimate being made so far as possible of the value of such debts or claims as are subject to any contingency or sound only in damages or for some other reason do not bear a certain value.

(2.) Subject to the next succeeding section, in the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and debts provable and the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of the Commonwealth relating to bankruptcy in relation to the estates of bankrupt persons, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up and make such claims against the company as they respectively are entitled to by virtue of this section.

Priorities.
U.K. s. 319.
N.S.W. s. 297.
Vic. s. 216.
Qld. ss. 274–274A.
S.A. s. 179.
W.A. s. 271.
Tas. s. 227.

292.—(1.) Subject to the provisions of this Ordinance, in a winding up there shall be paid in priority to all other unsecured debts—

(*a*) firstly, the costs and expenses of the winding up including the taxed costs of a petitioner payable under section two hundred and twenty-four of this Ordinance, the remuneration of the liquidator and the costs of any audit carried out pursuant to section two hundred and eighty-one of this Ordinance;

(*b*) secondly, all wages or salary of any employee (including earnings by way of commission, not being an overriding commission, and any amount payable by way of allowance or reimbursement under any contract of employment or award or agreement regulating conditions of employment) not exceeding Three hundred pounds, whether payable for time or piece work, in respect of services rendered by him to the company within four months before the commencement of the winding up;

(*c*) thirdly, all amounts, not exceeding in any particular case One thousand pounds, due in respect of worker's compensation under any law relating to worker's compensation accrued before the commencement of the winding up;

(*d*) fourthly, all remuneration payable to any employee in respect of annual leave or long service leave, or both, or, in the case of his death, to any other person in his right, accrued in respect of any period before the commencement of the winding up; and

(*e*) fifthly, the amount of all rates, being rates that are or are in the nature of municipal or other local rates, due from the company at the date of the commencement of the winding up and having become due and payable within the twelve months next preceding that date, the amount of assessed income tax, or income tax and social services contribution, being tax or tax and contribution assessed under any Act, State Act or Ordinance of a Territory of the Commonwealth before the date of the commencement of the winding up and not exceeding in the whole one year's assessment, and any amount due and payable by way of repayment of any advance made to the company, or in payment of any amount owing by the company for goods supplied or services rendered to it, under any Act, State Act or Ordinance of a Territory of the Commonwealth relating to or providing for the improvement, development or settlement of land or the aid, development or encouragement of mining.

(2.) The debts in each class specified in the last preceding sub-section rank equally between themselves, and shall be paid in full, unless the property of the company is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3.) Where a payment has been made to an employee of the company on account of wages, salary, annual leave or long service leave out of money advanced by a person for that purpose, the person by whom the money was advanced has, in a winding up, a right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which the employee would have been entitled to priority in the winding up has been diminished by reason of the payment, and has the same right of priority in respect of that amount as the employee would have had if the payment had not been made.

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(4.) So far as the assets of the company available for payment of general creditors are insufficient to meet any preferential debts specified in paragraphs (*b*) and (*d*) of sub-section (1.) of this section and any amount payable in priority by virtue of the last preceding sub-section, those debts have priority over the claims of the holders of debentures under any floating charge created by the company and shall be paid accordingly out of any property comprised in or subject to that charge.

(5.) Where the company is under a contract of insurance, being a contract entered into before the commencement of the winding up, insured against liability to third parties, then, if any such liability is incurred by the company (either before or after the commencement of the winding up) and an amount in respect of that liability is or has been received by the company or the liquidator from the insurer, the amount shall, after deducting any expenses of or incidental to getting in such amount, be paid by the liquidator to the third party in respect of whom the liability was incurred to the extent necessary to discharge that liability or any part of that liability remaining undischarged in priority to all payments in respect of the debts referred to in sub-section (1.) of this section.

(6.) If the liability of the insurer to the company is less than the liability of the company to the third party, the last preceding sub-section does not limit the rights of the third party in respect of the balance.

(7.) The provisions of sub-sections (5.) and (6.) of this section have effect notwithstanding any agreement to the contrary entered into after the first day of October, One thousand nine hundred and fifty-four.

(8.) Notwithstanding anything in sub-section (1.) of this section—

(*a*) paragraph (*c*) of that sub-section does not apply in relation to the winding up of a company in any case where the company is being wound up voluntarily merely for the purpose of reconstruction or of amalgamation with another company and the right to the compensation has, on the reconstruction or amalgamation, been preserved to the person entitled thereto or where the company has entered into a contract with an insurer in respect of any liability under any law relating to workers' compensation; and

(*b*) where a company has given security for the payment or repayment of any amount to which paragraph (*e*) of that sub-section relates, that paragraph applies only in relation to the balance of any such amount remaining due after deducting therefrom the net amount realized from such security.

(9.) Where, in any winding up, assets have been recovered under an indemnity for costs of litigation given by certain creditors, or have been protected or preserved by the payment of moneys or the giving of indemnity by creditors, or where expenses in relation to which a creditor has indemnified a liquidator have been recovered, the Court may make such order as it deems just with respect to the distribution of those assets and the amount of those expenses so recovered with a view to giving those creditors an advantage over others in consideration of the risk run by them in so doing.

Subdivision C.—Effect on other Transactions.

Settlements, preferences, &c.
U.K. s. 320.
N.S.W. s. 298.
Vic. s. 217.
Qld. s. 275.
S.A. s. 281.
W.A. s. 273.
Tas. s. 228.

293.—(1.) Any settlement, conveyance, transfer, charge, delivery of goods, payment, execution or other act relating to property made or done by or against a company which, had it been made or done by or against an individual, would in his bankruptcy be void or voidable is, in the event of the company being wound up, void or voidable in like manner.

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

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

(i) the date of the presentation of the petition; or

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

whichever is the earlier; and

(*b*) in the case of a voluntary winding up—the date upon which the resolution to wind up the company voluntarily is passed.

(3.) A transfer or assignment by a company of all its property to trustees for the benefit of all its creditors is void.

Effect of floating charge.
U.K. s. 322.
Vic. s. 218.
Qld. s. 276.
S.A. s. 282.
W.A. s. 275.
Tas. s. 229.

294. A floating charge on the undertaking or property of the company created within six months before the commencement of the winding up is, unless it is proved that the company immediately after the creation of the charge was solvent, invalid except to the amount of any cash paid to the company at the time of or subsequently to the creation of and in consideration for the charge together with interest on that amount at the rate of five per centum per annum.

Liquidator's right to recover in respect of certain sales to or by company.

295.—(1.) Where any property, business or undertaking has been acquired by a company for a cash consideration within a period of two years before the commencement of the winding up of the company—

(*a*) from a person who was, at the time of the acquisition, a director of the company; or

(*b*) from a company of which, at the time of the acquisition, a person was a director who was also a director of the first-mentioned company,

the liquidator may recover from the person or company from which the property, business or undertaking was acquired any amount by which the cash consideration for the acquisition exceeded the value of the property, business or undertaking at the time of its acquisition.

(2.) Where any property, business or undertaking has been sold by a company for a cash consideration within a period of two years before the commencement of the winding up of the company—

(*a*) to a person who was, at the time of the sale, a director of the company; or

(*b*) to a company of which, at the time of the sale, a person was a director who was also a director of the first-mentioned company,

the liquidator may recover from the person or company to which the property, business or undertaking was sold any amount by which the value of the property, business or undertaking at the time of the sale exceeded the cash consideration.

(3.) For the purposes of this section, the value of the property, business or undertaking includes the value of any goodwill or profits which might have been made from the business or undertaking or similar considerations.

(4.) In this section, "cash consideration" means any consideration payable otherwise than by the issue of shares.

Disclaimer of onerous property.
U.K. s. 323.
N.S.W. s. 300.
Vic. s. 219.
Qld. s. 277.
S.A. s. 283.
W.A. s. 276.
Tas. s. 230.

296.—(1.) Where any part of the property of a company consists of—

(*a*) an estate or interest in land which is burdened with onerous covenants;

(*b*) shares or stock in corporations;

(*c*) unprofitable contracts; or

(*d*) any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money,

the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto, may, with the leave of the Court or the committee of inspection and subject to this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as is allowed by the Court or the committee, disclaim the property, but, where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power of disclaiming may be exercised at any time within twelve months after he has become aware thereof or such extended period as is allowed by the Court or the committee.

(2.) The disclaimer operates to determine, as from the date of disclaimer, the rights, interests and liabilities of the company and the property of the company in or in respect of the property disclaimed, but does 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 or committee, before or on granting leave to disclaim, may require such notices to be given to persons interested, impose such terms as a condition of granting leave and make such other order in the matter as the Court or committee thinks just.

(4.) The liquidator is not entitled to disclaim if 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 after the receipt of the application or such further period as is allowed by the Court or the committee, given notice to the applicant that he intends to apply to the Court or the committee for leave to disclaim, and, in the case of a contract, if the liquidator after such an application in writing does not within that period or further period disclaim the contract, the liquidator shall be deemed to have adopted it.

(5.) The Court may, on the application of a person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as the Court thinks just, and any damages payable under the order to that person may be proved by him as a debt in the winding up.

(6.) The Court may, on the application of a person who either claims an interest in any disclaimed property or is under a liability not discharged by this Ordinance in respect of any disclaimed property and on hearing such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any person entitled thereto, or to whom it seems just that the property should be delivered by way of compensation for such liability, or a trustee for him, and on such terms as the Court thinks just, and on any such vesting order being made and an office copy thereof being lodged with the Registrar and, if the order relates to land, with the Registrar of Titles, the property comprised therein shall vest accordingly in the person therein named in that behalf without any further conveyance, transfer or assignment.

(7.) Notwithstanding anything in the last preceding sub-section, where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee, except upon the terms of making that person—

(*a*) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the date of commencement of the winding up; or

(*b*) if the Court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date,

and, in either event, if the case so requires, as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property and, if there is no person claiming under the company who is willing to accept an order upon such terms, the Court may vest the estate and interest of the company in the property in any person liable personally or in a representative character and either alone or jointly with the company to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the company.

(8.) A person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up.

Definitions.
Vic. s. 221 (3).
Qld. ss. 278. (3), 279 (3).
S.A. s. 284 (3).

297. For the purposes of the next two succeeding sections—
"goods" includes chattels personal;
"the Sheriff" means the Sheriff of the Territory, and includes any officer charged with the execution of a writ or other process.

Restriction of rights of creditor as to execution or attachment.
U.K. s. 325.
N.S.W. s. 301.
Vic. s. 220.
Qld. s. 278.
S.A. s. 284 (1), (2).
W.A. s. 277.
Tas. s. 231.

298.—(1.) Where a creditor has issued execution against the goods or land of a company or has attached any debt due to the company and the company is subsequently wound up, he is not entitled to retain the benefit of the execution or attachment against the liquidator unless he has completed the execution or attachment before the date of the commencement of the winding up, but—

(*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 this section, be substituted for the date of the commencement of the winding up;

(*b*) a person who purchases in good faith under a sale by the Sheriff any goods of a company on which an execution has been levied in all cases acquires a good title to them against the liquidator; and

(*c*) the rights conferred by this sub-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 thinks fit.

(2.) For the purposes of this section—

(*a*) an execution against goods is completed by seizure and sale;

(*b*) an attachment of a debt is completed by receipt of the debt; and

(*c*) an execution against land is completed by sale or, in the case of an equitable interest, by the appointment of a receiver.

Duties of Sheriff as to goods taken in execution.
U.K. s. 326.
N.S.W. s. 302.
Vic. s. 221.
Qld. s. 279.
S.A. s. 285.
W.A. s. 278.
Tas. s. 232.

299.—(1.) Subject to the provisions of sub-section (3.) of this section, where any goods of a company are taken in execution and, before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the Sheriff that a provisional liquidator has been appointed, that a winding up order has

been made or that a resolution for voluntary winding up has been passed, the Sheriff shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or moneys 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 the next succeeding subsection, where, under an execution in respect of a judgment for a sum exceeding Twenty pounds, the goods of a company are sold or money is paid in order to avoid sale, the Sheriff shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for fourteen days and, if within that time, notice is served on him of a petition for the winding up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding up and an order is made or a resolution is passed for the winding up, the Sheriff shall pay the balance to the liquidator who shall be entitled to retain it as against the execution creditor.

(3.) The rights conferred by 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.

Subdivision D.—Offences.

Offences by officers of companies in liquidation.
U.K. s. 328.
N.S.W. s. 303.
Vic. s. 222.
Qld. s. 280.
S.A. s. 286.
W.A. s. 279.
Tas. s. 233.

300.—(1.) A person who, being a past or present officer of a company which is being wound up—

(*a*) does not, to the best of his knowledge and belief, fully and truly discover to the liquidator all the property (real and personal) of the company and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company;

(*b*) does not deliver up to the liquidator, or as he directs—

(i) all the real and personal property of the company in his custody or under his control and which he is required by law to deliver up; or

(ii) all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up;

(*c*) within twelve months next before the commencement of the winding up or at any time thereafter—

(i) has concealed any part of the property of the company to the value of Ten pounds or upwards or has concealed any debt due to or from the company;

(ii) has fraudently removed any part of the property of the company to the value of Ten pounds or upwards;

(iii) has concealed, destroyed, mutilated or falsified any book or paper affecting or relating to the property or affairs of the company;

(iv) has made any false entry in any book or paper affecting or relating to the property or affairs of the company;

(v) has fraudulently parted with, altered or made any omission in any document affecting or relating to the property or affairs of the company;

(vi) by any false representation or other fraud, has obtained any property for or on behalf of the company on credit which the company has not subsequently paid for;

(vii) has obtained on credit, for or on behalf of the company, under the false pretence that the company is carrying on its business, any property which the company has not subsequently paid for; or

(viii) has pawned, pledged or disposed of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing was in the ordinary way of the business of the company;

(*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, fails for a period of one month to inform the liquidator thereof;

(*f*) prevents the production of any book or paper affecting or relating to the property or affairs of the company;

(*g*) within twelve months next before the commencement of the winding up or at any time thereafter, has attempted to account for any part of the property of the company by fictitious losses or expenses; or

(*h*) within twelve months next before the commencement of the winding up or at any time thereafter, has been guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up,

is guilty of an offence against this Ordinance.

Penalty: Imprisonment for two years.

(2.) It is a defence to a charge under paragraph (*a*), (*b*) or (*d*), or under sub-paragraph (i), (vii) or (viii) of paragraph (*c*), of the last preceding sub-section if the accused proves that he had no intent to defraud, and to a charge under paragraph (*f*), or under sub-paragraph (iii) or (iv) of paragraph (c), of that sub-section if the accused proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(3.) Where a person pawns, pledges or disposes of any property in circumstances which amount to an offence under sub-paragraph (viii) of paragraph (*c*) of sub-section (1.) of this section, every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in those circumstances is guilty of an offence against this Ordinance.

Penalty: Imprisonment for two years.

Inducement to be appointed liquidator; falsification of books.
U.K. ss. 329, 336.
N.S.W. s. 304.
Vic. ss. 223, 229 (2).
Qld. s. 281.
S.A. s. 287.
W.A. s. 279.
Tas. s. 234.

301.—(1.) A person who gives, or agrees or offers to give, to any member or creditor of a company any valuable consideration with a view of securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator is guilty of an offence against this Ordinance.

Penalty: One hundred pounds.

(2.) An officer or contributory of a company being wound up who destroys, mutilates, alters or falsifies any books, papers or securities, or makes any false or fraudulent entry in any register, book of account or document belonging to the company, with intent to defraud or deceive any person is guilty of an offence against this Ordinance.

Penalty: Imprisonment for two years.

Frauds by officers.
U.K. s. 330.
N.S.W. s. 305.
Vic. s. 224.
Qld s. 282.
S.A. s. 288.
W.A. s. 279.
Tas. s. 235.

302. A person who, while an officer of a company which is subsequently ordered to be wound up by the Court or which subsequently passes a resolution for voluntary winding up—

(*a*) has, by false pretences or by means of any other fraud, induced any person to give credit to the company;

(*b*) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company; or

(*c*) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against the company,

is guilty of an offence against this Ordinance.

Penalty: Imprisonment for two years.

Liability where proper accounts not kept.
U.K. s. 331.
N.S.W. s. 306.
Vic. s. 225.
Qld. s. 283.
S.A. s. 289.
W.A. s. 280.
Tas. s. 236.

303.—(1.) If, on an investigation under any other Part of this Ordinance or where a company is wound up, it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the investigation or winding up or the period between the incorporation of the company and the commencement of the investigation or winding up, whichever is the shorter, every officer who is in default is, unless he acted honestly and shows that in the circumstances in which the business of the company was carried on the default was excusable, guilty of an offence against this Ordinance.

Penalty: Two hundred pounds or imprisonment for one year.

(2.) For the purposes of this section, proper books of account shall be deemed not to have been kept in the case of a company if—

(*a*) 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 the company, including—

(i) books containing entries from day to day in sufficient detail of all cash received and cash paid; and

(ii) where the trade or business has involved dealings in goods, statements of the annual stocktakings 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; or

(*b*) such books or accounts have not been kept in such manner as to enable them to be conveniently and properly audited, whether or not the company has appointed an auditor.

(3.) If, in the course of the winding up of a company, it appears that an officer of the company who was knowingly a party to the contracting of a debt provable in the winding up had, at the time the debt was contracted, no reasonable or probable ground of expectation, after taking into consideration the other liabilities, if any, of the company at the time, of the company being able to pay the debt, the officer is guilty of an offence against this Ordinance.

Penalty: One hundred pounds or imprisonment for three months.

Responsibility for fraudulent trading.
U.K. s. 332.
N.S.W. s. 307.
Vic. s. 226.
Qld. s. 284.
S.A. s. 290.
W.A. s. 281.
Tas. s. 237.

304.—(1.) If, in the course of winding up, it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the Court (on the application of the liquidator or any creditor or contributory of the company) may, if it thinks proper so to do, declare that any person who was knowingly a party to the carrying on of the business in that manner is personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Court directs.

(2.) Where the Court makes a declaration pursuant to the last preceding sub-section, it may give such further directions as it thinks proper for the purpose of giving effect to the declaration and, in particular, may make provision for making the liability of any person under the declaration a charge on any debt or obligation due from the company to him, or on any charge of any interest in any charge on any assets of the company held by or vested in him or any corporation or person on his behalf, or any person claiming as assignee from or through the person liable or any corporation or person acting on his behalf,

and may from time to time make such further order as is necessary for the purpose of enforcing any charge imposed under this sub-section.

(3.) For the purpose of the last preceding sub-section, " assignee " includes any person to whom or in whose favour by the directions of the person liable the debt, obligation or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration, not being consideration by way of marriage, given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(4.) Where any business of a company is carried on with the intent or for the purpose mentioned in sub-section (1.) of this section, every person who was knowingly a party to the carrying on of the business with that intent or purpose is guilty of an offence against this Ordinance.

Penalty: Imprisonment for one year.

(5.) The provisions of this section have effect notwithstanding that the person concerned is criminally liable apart from this section in respect of the matters on the ground of which the declaration is made.

(6.) On the hearing of an application under sub-section (1.) of this section, the liquidator may himself give evidence or call witnesses.

Power of Court to assess damages against delinquent officers, &c.

U.K. s. 333. N.S.W. s. 308. Vic. s. 227. Qld. s. 285. S.A. s. 291. W.A. s. 282. Tas. s. 238.

305.—(1.) If, in the course of winding up, it appears that a person who has taken part in the formation or promotion of the company, or a past or present liquidator or officer, has misapplied or retained, or become liable or accountable for, any money or property of the company or has been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of the liquidator or of any creditor or contributory, examine into the conduct of such person, liquidator or officer and compel him to repay or restore the money or property, or any part thereof, with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the Court thinks just.

(2.) This section extends and applies to and in respect of the receipt of any money or property by an officer of the company during the two years immediately preceding the commencement of the winding up, whether by way of salary or otherwise, appearing to the Court to be unfair or unjust to other members of the company.

(3.) The provisions of this section have effect notwithstanding that the offence is one for which the offender is criminally liable.

Prosecution of delinquent officers and members of company.
U.K. s. 334.
N.S.W. s. 309
Vic. s. 228.
Qld. s. 286.
S.A. s. 292.
W.A. s. 283.
Tas. s. 239.

306.—(1.) If it appears to the Court, in the course of a winding up by the Court, that any past or present officer, or any member, of the company has been guilty of an 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 to refer the matter to the Attorney-General.

(2.) If it appears to the liquidator, in the course of a voluntary winding up, that any past or present officer, or any member, of the company has been guilty of an offence in relation to the company for which he is criminally liable, he shall forthwith report the matter to the Attorney-General and shall, in respect of information or documents in his possession or under his control which relate to the matter in question, furnish the Attorney-General with such information, and give to him such access to and facilities for inspecting and taking copies of any documents, as he may require.

(3.) If it appears to the liquidator, in the course of a winding up, that the company which is being wound up will be unable to pay its unsecured creditors more than Ten shillings in the pound, the liquidator shall forthwith report the matter in writing to the Registrar and shall furnish the Registrar with such information, and give to him such access to and facilities for inspecting and taking copies of any document, as the Registrar may require.

(4.) Where any report is made under sub-section (2.) or sub-section (3.) of this section, the Attorney-General may, if he thinks fit, investigate the matter and may, if he thinks expedient, apply to the Court for an order conferring on him or any person designated by him for the purpose with respect to the company concerned all such powers of investigating the affairs of the company as are provided by this Ordinance in the case of a winding up by the Court, but, if it appears to him that the case is not one in which proceedings ought to be taken by him, he shall inform the liquidator accordingly, and thereupon, subject to the previous approval of the Court, the liquidator may himself take proceedings against the offender and, for that purpose, the Attorney-General shall be deemed to have given his written consent to the proceedings being taken by the liquidator.

(5.) If it appears to the Court in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty of an offence in relation to the company for which he is criminally liable and that no report with

respect to the matter has been made by the liquidator to the Attorney-General, the Court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and, on a report being made accordingly, the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of sub-section (2.) of this section.

(6.) If, where a matter is reported or referred to the Attorney-General or Registrar under this section, he considers that the case is one in which a prosecution ought to be instituted, he may institute proceedings accordingly, and the liquidator and every officer and agent of the company past and present, other than the defendant in the proceedings, shall give the Attorney-General or Registrar all assistance in connexion with the prosecution which he is reasonably able to give.

(7.) For the purpose of the last preceding sub-section, "agent", in relation to a company, includes any banker or solicitor of the company and any person employed by the company as auditor, whether or not he is an officer of the company.

(8.) If a person fails or neglects to give assistance in manner required by sub-section (6.) of this section, the Court may, on the application of the Attorney-General or Registrar, direct that person to comply with the requirements of that sub-section, and, where any application is made under this sub-section with respect to a liquidator, the Court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.

(9.) The Attorney-General may direct that the whole or any part of any costs and expenses properly incurred by the liquidator in proceedings brought by him under this section shall be defrayed by the Commonwealth.

(10.) Subject to any direction given under the last preceding sub-section, and to any charges on the assets of the company and any debts to which priority is given by this Ordinance, all such costs and expenses are payable out of those assets as part of the costs of winding up.

Subdivision E.—Dissolution.

Power of Court to declare dissolution of company void.

U.K. s. 352.
N.S.W. s. 322.
Vic. s. 240.
Qld. s. 298.
S.A. s. 304.
W.A. s. 295.
Tas. s. 251.

307.—(1.) Where a company has been dissolved, the Court may at any time within two years after the date of dissolution, on the application of the liquidator of the company or of 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.) The person on whose application the order was made shall, within seven days after the making of the order or such further time as the Court allows, lodge with the Registrar an office copy of the order and, if he fails so to do, he is guilty of an offence against this Ordinance.

Default penalty: Ten pounds.

Power of Registrar to strike defunct company off register.

U.K. s. 353. N.S.W. s. 323. Vic. s. 241. Qld. s. 299. S.A. s. 305. W.A. s. 296. Tas. s. 252.

308.—(1.) Where the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, he may send to the company by post a letter to that effect stating that, if an answer showing cause to the contrary is not received within one month from the date thereof, a notice will be published in the *Gazette* with a view to striking the name of the company off the register.

(2.) Unless the Registrar receives an answer within one month from the date of the letter to the effect that the company is carrying on business or is in operation, he may publish in the *Gazette* and send to the company by registered post a notice that, at the expiration of three months from the date of that notice, the name of the company mentioned in the notice will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(3.) If in any case where a company is being wound up the Registrar has reasonable cause to believe that—

(*a*) no liquidator is acting;

(*b*) the affairs of the company are fully wound up and, for a period of six months, the liquidator has been in default in lodging any return required to be made by him; or

(*c*) the affairs of the company have been fully wound up under Division 2 of this Part and there are no assets or the assets available are not sufficient to pay the costs of obtaining an order of the Court dissolving the company,

he may publish in the *Gazette* and send to the company or the liquidator, if any, a notice to the same effect as that referred to in the last preceding sub-section.

(4.) At the expiration of the time mentioned in a notice given by the Registrar under sub-section (2.) or (3.) of this section, the Registrar may, unless cause to the contrary is previously shown, strike the name of the company off the register and shall publish notice thereof in the *Gazette*, and, on

the publication in the *Gazette* of that last-mentioned notice, the dissolution of the company takes effect, but—

(*a*) the liability, if any, of every officer and member of the company continues and may be enforced as if the company had not been dissolved; and

(*b*) nothing in this sub-section affects the power of the Court to wind up a company the name of which has been struck off the register.

(5.) If a person feels aggrieved by the name of the company having been struck off the register, the Court on application made by the person at any time within fifteen years after the name of the company has been so struck off may, if the Court is 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 be restored to the register, order the name of the company to be restored to the register, and, upon an office copy of the order being lodged with the Registrar, the company shall be deemed to have continued in existence as if its name had not been struck off, and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(6.) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last-known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office or, if no office has been registered, to the care of some officer of the company, or, if there is no officer of the company whose name and address are known to the Registrar, it may be sent to each person who subscribed the memorandum of the company addressed to him at the address mentioned in the memorandum.

Registrar to act as representative of defunct company in certain events.
N.S.W. s. 324.
Vic. s. 242.
S.A. s. 306.
W.A. s. 297.
Tas. s. 253.

309.—(1.) Where, after a company has been dissolved, it is proved to the satisfaction of the Registrar—

(*a*) that the company, if it still existed, would be legally or equitably bound to carry out, complete or give effect to some dealing, transaction or matter; and

(*b*) that, in order to carry out, complete or give effect thereto, some purely administrative act, not being of a discretionary kind, should have been done by or on behalf of the company or, if the company still existed, should be done by or on behalf of the company,

the Registrar may, as representing the company or its liquidator under the provisions of this section, do or cause to be done any such act.

(2.) The Registrar may execute or sign any relevant instrument or document adding a memorandum stating that he has done so in pursuance of this section, and such execution or signature has the same force, validity and effect as if the company, if it still existed, had duly executed such instrument or document.

Outstanding assets of defunct company to vest in Registrar.
N.S.W. s. 325. Vic. s. 243. S.A. s. 307. W.A. s. 298. Tas. s. 254.

310.—(1.) Where, after a company has been dissolved, there remains any outstanding property, real or personal, including things in action and whether within or outside the Territory, which was vested in the company or to which it was entitled, or over which it had a disposing power at the time it was dissolved, but which was not got in, realized upon or otherwise disposed of or dealt with by the company or its liquidator, such property (except called and uncalled capital) shall, for the purposes of the following provisions of this Subdivision and notwithstanding any enactment or rule of law to the contrary, by the operation of this section be and become vested in the Registrar for all the estate and interest therein legal or equitable of the company or its liquidator at the date the company was dissolved, together with all claims, rights and remedies which the company or its liquidator then had in respect thereof.

(2.) Where any claim, right or remedy of the liquidator may under this Ordinance be made, exercised or availed of only with the approval or concurrence of the Court or some other person, the Registrar may, for the purposes of this section, make, exercise or avail himself of that claim, right or remedy without such approval or concurrence.

Outstanding interests in property, how disposed of.
N.S.W. s. 326. Vic. s. 244. S.A. ss. 308–309. W.A. s. 299. Tas. s. 255.

311.—(1.) Upon proof to the satisfaction of the Registrar that there is vested in him by operation of the last preceding section or any corresponding previous law of the Territory, or by operation of a law of a proclaimed State or Territory corresponding with section three hundred and eighteen of this Ordinance, any estate or interest in property, whether solely or together with any other person, of a beneficial nature and not merely held in trust, the Registrar may sell or otherwise dispose of, or deal with, such estate or interest or any part thereof as he sees fit.

(2.) The Registrar may sell or otherwise dispose of, or deal with, such property either solely or in concurrence with any other person by public auction, public tender or private contract and in such manner, for such consideration and upon such terms and conditions as he thinks fit, with power to recind any

contract and resell or otherwise dispose of or deal with such property as he thinks expedient, and may make, execute, sign and give such contracts, instruments and documents as he thinks necessary.

(3.) The Registrar shall be remunerated by such commission, whether by way of percentage or otherwise, as is prescribed in respect of the exercise of the powers conferred upon him by sub-section (1.) of this section.

(4.) The Registrar shall apply any moneys received by him in the exercise of any power conferred on him by this Subdivision in defraying the costs and expenses of and incidental to the exercise of that power and in making payments authorized by this Subdivision, and shall pay the remainder, if any, of the moneys to the Treasurer.

(5.) The Treasurer shall pay all moneys paid to him under this section into the Consolidated Revenue Fund.

(6.) A person claiming to be entitled to any money paid to the Treasurer under this section may apply to the Court for an order for payment to him of a sum due to him and the Court, if satisfied that the person claiming is entitled to the payment of that sum, shall make an order for the payment accordingly.

(7.) Upon the making of an order under the last preceding sub-section for payment of any money to a person, or where he is otherwise satisfied that a person is entitled to any money paid to the Treasurer under this section, the Treasurer shall pay an amount equal to that money to that person.

(8.) The provisions of this section do not deprive a person of another right or remedy to which he is entitled against the liquidator or another person.

(9.) In this section, "proclaimed State or Territory" means a State or Territory of the Commonwealth that is a proclaimed State or a proclaimed Territory for the purposes of section three hundred and eighteen of this Ordinance.

312. Property vested in the Registrar by operation of this Subdivision, or by operation of any corresponding previous law of the Territory, is liable and subject to all charges, claims and liabilities imposed thereon or affecting such property by reason of any law as to rates, taxes, charges or any other

Liability of Registrar and Commonwealth as to property vested in Registrar.
Vic. s. 245.
Tas. s. 256.

matter or thing to which such property would have been liable or subject had such property continued in the possession, ownership or occupation of the company, but there shall not be imposed on the Registrar or the Commonwealth any duty, obligation or liability whatsoever to do or suffer any act or thing required by any such statutory provision to be done or suffered by the owner or occupier other than the satisfaction or payment of any such charges, claims or liabilities out of the assets of the company so far as they are, in the opinion of the Registrar, properly available for and applicable to such payment.

Accounts.
N.S.W. s. 328.
Vic. s. 246.
S.A. s. 310.
W.A. s. 301.
Tas. s. 257.

313. The Registrar shall—

(*a*) record in the register of companies a statement of any property coming to his hand, under his control or to his knowledge vested in him by operation of this Subdivision and of his dealings therewith;

(*b*) keep accounts of all moneys arising therefrom and of how they have been disposed of; and

(*c*) keep all accounts, vouchers, receipts and papers relating to such property and moneys.

Division 5.—Winding Up of Unregistered Companies.

Definitions, &c.
U.K. ss. 398, 404.
N.S.W. ss. 329, 334.
Vic. s. 248.
Qld. ss. 359, 365.
S.A. ss. 345, 350.
W.A. s. 302.
Tas. s. 259.

314.—(1.) For the purposes of this Division, "unregistered company" includes a foreign company and any partnership, association or company consisting of more than five members, but does not include a company incorporated under this Ordinance or under any corresponding previous law of the Territory.

(2.) The provisions of this Division have effect in addition to and not in derogation of any provision contained in this or any other Ordinance with respect to winding up companies by the Court, and the Court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies.

Winding up of unregistered companies.
U.K. ss. 399–400.
N.S.W. ss. 71, 330.
Vic. s. 249.
Qld. s. 360.
S.A. s. 346.
W.A. s. 303.
Tas. s. 260.

315.—(1.) Subject to this Division, an unregistered company may be wound up under this Part, and this Part applies accordingly in relation to an unregistered company with the following adaptations:—

(*a*) the principal place of business of such a company in the Territory shall, for all the purposes of the winding up, be deemed to be the registered office of the company;

(*b*) no such company shall be wound up voluntarily;

(*c*) the circumstances in which such a company may be wound up are as follows:—

(i) if the company is dissolved, has ceased to have a place of business in the Territory, has a place of business in the Territory only for the purpose of winding up its affairs or has ceased to carry on business in the Territory;

(ii) if the company is unable to pay its debts; or

(iii) if the Court is of opinion that it is just and equitable that the company should be wound up.

(2.) An unregistered company shall be deemed to be unable to pay its debts if—

(*a*) a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding Fifty pounds then due has served on the company, by leaving at its principal place of business in the Territory or by delivering to the secretary or a director, manager or principal officer of the company or by otherwise serving in such manner as the Court approves or directs, a demand under his hand requiring the company to pay the sum so due and the company has, for three weeks after the service of the demand, neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor;

(*b*) an action or other proceeding has been instituted against any member for any debt or demand due or claimed to be due from the company or from him in his character of member and, notice in writing of the institution of the action or proceeding having been served on the company by leaving it at its principal place of business in the Territory or by delivering it to the secretary or some director, manager or principal officer of the company or by otherwise serving it in such manner as the Court approves or directs, the company has not, within ten days after service of the notice, paid, secured or compounded for the debt or demand or procured the action or proceeding to be stayed or indemnified the defendant to his reasonable satisfaction against the action or proceeding and against all costs, damages and expenses to be incurred by him by reason thereof;

(*c*) execution or other process issued on a judgment, decree or order obtained in any court in favour of a creditor against the company or any member thereof as such, or any person authorized to be sued as nominal defendant on behalf of the company, is returned unsatisfied; or

(*d*) it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

(3.) A company incorporated outside the Territory may be wound up as an unregistered company under this Division notwithstanding that it is being wound up or has been dissolved or has otherwise ceased to exist as a company under or by virtue of the laws of the place under which it was incorporated.

(4.) In this section " to carry on business " has the same meaning as it has in section three hundred and forty-four of this Ordinance.

Contributories in winding up of unregistered company.
U.K. s. 401.
N.S.W. s. 331.
Vic. s. 250.
Qld. s. 361.
S.A. s. 347.
W.A. s. 304.
Tas. s. 261.

316.—(1.) On an unregistered company being wound up, every person shall be a contributory—

(*a*) who is liable to pay or contribute to the payment of—

(i) any debt or liability of the company;

(ii) any sum for the adjustment of the rights of the members among themselves; or

(iii) the costs and expenses of winding up; or

(*b*) where the company has been dissolved in the place in which it is formed or incorporated, who immediately before the dissolution was so liable,

and every contributory is liable to contribute to the assets of the company all sums due from him in respect of any such liability.

(2.) On the death or bankruptcy of any contributory, the provisions of this Ordinance with respect to the personal representatives of deceased contributories and the assignees and trustees of bankrupt contributories, respectively, apply.

Power of Court to stay or restrain proceedings.
U.K. ss. 402–403.
N.S.W. ss. 332–333.
Vic. s. 251.
Qld. ss. 362–363.
S.A. ss. 348–349.
W.A. ss. 305–306.
Tas. s. 262.

317.—(1.) The provisions of this Ordinance with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order extend, in the case of an unregistered company where the application to stay or restrain is by a creditor, to actions and proceedings against any contributory of the company.

(2.) Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the

company in respect of any debt of the company except by leave of the Court and subject to such terms as the Court imposes.

Outstanding assets of defunct unregistered company. Vic. s. 247.

318.—(1.) Where an unregistered company, being an unregistered company the place of incorporation or origin of which is in a proclaimed State or in a proclaimed Territory, has been dissolved and there remains in the Territory any outstanding property, real or personal (including things in action), which was vested in the company or to which it was entitled or over which it had a disposing power at the time it was dissolved, but which was not got in, realized upon or otherwise disposed of or dealt with by the company or its liquidator before the dissolution, the property, except called and uncalled capital, shall, by force of this section, be and become vested, for all the estate and interest therein legal or equitable of the company or its liquidator at the date the company was dissolved, in such person as is entitled thereto according to the law of the place of incorporation or origin of the company.

(2.) Where the place of origin of an unregistered company is the Territory, the provisions of section three hundred and nine to section three hundred and thirteen (inclusive) of this Ordinance apply, with such adaptations as may be necessary, in respect of that company.

(3.) Where it appears to the Attorney-General that an enactment in force in any State or in any other Territory of the Commonwealth contains provisions similar to the provisions of this section, he may, by notice published in the *Gazette*, declare that State or Territory to be a proclaimed State or proclaimed Territory, as the case may be, for the purposes of this section.

(4.) In this section—

"proclaimed State" means a State specified in a notice under the last preceding sub-section;

"proclaimed Territory" means a Territory of the Commonwealth so specified.

PART XI.—VARIOUS TYPES OF COMPANIES, ETC.

Division 1.—No Liability Companies.

Application of Ordinance to no liability companies. Vic. s. 267. Qld. s. 313. Tas. s. 263.

319. Subject to this Division and save as otherwise expressly provided in this Ordinance, the provisions of this Ordinance relating to public companies, except sections two hundred and eighteen to two hundred and twenty (inclusive), two hundred and thirty-six (so far as it relates to calls), two hundred and forty-four and sub-section (3.) of section two hundred and forty-five, apply to no liability companies.

Shareholder not liable to calls or contributions.
N.S.W. s. 43.
Vic. s. 268.
Qld. ss. 311–312.
S.A. s. 184.
W.A. s. 170.
Tas. s. 264.

320. The acceptance of a share in a no liability company, whether by original allotment or by transfer, does not constitute a contract on the part of the person accepting it to pay any calls in respect thereof or any contribution to the debts and liabilities of the company, and such a person is not liable to be sued for any calls or contributions but he is not entitled to a dividend upon any such share upon which a call is due and unpaid.

Dividends payable on shares held irrespective of amount paid up on shares.
N.S.W. s. 44.
Vic. s. 269.
Tas. s. 265.

321. Subject to any provisions of the articles relating to preferred, deferred or other special classes of shares, dividends that are payable to the shareholders in a no liability company are payable to the persons entitled thereto in proportion to the shares held by them respectively, irrespective of the amount paid up or credited as paid up thereon.

Calls when due.
N.S.W. s. 44.
Vic. s. 271.
Qld. s. 313.
S.A. s. 178.
W.A. s. 164.
Tas. s. 268.

322.—(1.) The calls upon shares in a no liability company shall be so made that they shall be payable—

(*a*) not less than fourteen days from the day on which the call is made; and

(*b*) on the second Wednesday in a month or, if that Wednesday is a public holiday, on the next following week-day which is not a public holiday,

and no subsequent call shall be made until after the expiration of seven days from the day upon which the call made immediately before it is payable.

(2.) A notice shall be printed on the face of all share certificates stating that such Wednesday or other day is the day on which calls are payable.

(3.) When a call is made, notice of the amount of the call and of the day when it is payable and of the place for payment shall, not less than seven days before such day, be—

(*a*) published in a daily newspaper published in the Territory; and

(*b*) sent by post to each holder of shares on which the call is made.

Forfeiture of shares.
N.S.W. s. 44.
Vic. s. 272.
S.A. ss. 178 (6), 179.
W.A. s. 164.
Tas. s. 269.

323.—(1.) Any share in a no liability company upon which a call at the expiration of fourteen days after the day for its payment is unpaid is thereupon forfeited without any resolution of directors or other proceedings and shall, subject to this Division, be offered for sale by public auction not more than six weeks after the date on which the call is payable.

(2.) Such sale shall be advertised not less than fourteen and not more than twenty-one days before the day appointed for the sale in a daily newspaper published in the Territory.

(3.) Where a sale is not held owing to error or inadvertence, the sale, if it is held in due course as soon as may be after the discovery of the error or inadvertence, is not invalid.

(4.) If there is any failure to comply with the provisions of this section, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Penalty: One hundred pounds.

(5.) At any such sale, a share forfeited for non-payment of any call may, if the company in accordance with its articles or by ordinary resolution so determines, be offered for sale and sold credited as paid up to the sum of the amount paid up thereon at the time of forfeiture and the amount of such call and the amount of any other calls becoming payable on or before the date of the sale.

(6.) The proceeds of the sale shall be applied in payment of—

(*a*) firstly, the expenses of the sale;
(*b*) secondly, any expenses necessarily incurred in respect of the forfeiture; and
(*c*) thirdly, the calls then due and unpaid,

and the balance, if any, shall be paid to the member whose share has been so sold on his delivering to the company the share certificate that relates to the forfeited share.

Provisions as to sale of forfeited shares. N.S.W. s. 44. Vic. s. 273. Qld. s. 313. S.A. ss. 179, 181. W.A. s. 165. Tas. s. 270.

324.—(1.) The directors may, in the case of a share advertised for sale as forfeited for non-payment of a call, fix a reserve price not exceeding the sum of the amount of the call due and unpaid on the share at the time of forfeiture and the amount of any other calls becoming payable on or before the date of the sale.

(2.) If a bid at least equal to the reserve price so fixed is not made for the share, the share may be withdrawn from sale.

(3.) A share so withdrawn from sale and any other share for which no bid is received at the sale shall be held by the directors in trust for the company and shall be disposed of in such manner as the company in accordance with its articles or by ordinary resolution determines, but, at any meeting of the company, no person is entitled to any vote in respect of the shares so held by the directors in trust.

(4.) Unless otherwise specifically provided by ordinary resolution, the shares to be so disposed of shall first be offered to shareholders for a period of fourteen days before being disposed of in any other manner.

As to shares held by or in trust for company. Vic. s. 274. Tas. s. 271.

325. No call has any effect upon any forfeited share which is held by or in trust for the company pursuant to this Division, but such a share, when it is re-issued or sold by the company, may be credited as paid up to such amount as the company, in accordance with its articles or by ordinary resolution, determines.

Sale of shares on non-payment of calls valid although specific numbers not advertised.
N.S.W. s. 44.
Vic. s. 275.
Tas. s. 272.

326.—(1.) When forfeited shares are sold for non-payment of any call, the sale is valid although the specific numbers thereof are not advertised.

(2.) In every advertisement, it is sufficient to give notice of the intended sale of forfeited shares by advertising to the effect that all shares on which a call remains unpaid will be sold.

Postponement of sale.
Vic. s. 276.
Tas. s. 272.

327.—(1.) An intended sale of forfeited shares which has been duly advertised may be postponed for not more than twenty-one days from the advertised date of sale or from any date to which the sale has duly been postponed, but so that no such intended sale shall be postponed to a date more than ninety days after the first date fixed for the intended sale.

(2.) The date to which the sale is postponed shall, in respect of every postponement, be advertised in a daily newspaper published in the Territory.

Redemption of forfeited shares.
N.S.W. s. 44.
Vic. s. 277.
S.A. s. 180.
W.A. s. 166.
Tas. s. 273.

328.—(1.) Notwithstanding anything in this Division, if a share belonging to a person has been forfeited, he may, at any time up to or on the day immediately preceding that upon which it is intended to sell the share, redeem the share by payment to the company of—

(*a*) all calls due thereon; and

(*b*) if the company so requires—

(i) a portion, calculated on a *pro rata* basis, of all expenses incurred by the company in respect of the forfeiture; and

(ii) a portion, calculated on a *pro rata* basis, of all costs and expenses of any proceeding which has been taken in respect of the forfeiture.

(2.) Upon such payment, the person is entitled to the share as if the forfeiture had not been incurred.

Office to be open the day before sale.
Vic. s. 278.
Tas. s. 274.

329. On the day immediately preceding the day on which a forfeited share is to be sold in pursuance of this Division, the company's office shall be open during the hours for which it is by this Ordinance required to be open and accessible to the public.

Distribution of surplus where cessation of business upon winding up.
N.S.W. s. 44.
Vic. s. 279.
Tas. s. 277.

330.—(1.) If, on the winding up of a no liability company, there remains any surplus, the surplus shall be distributed amongst the parties entitled thereto in proportion to the shares held by them respectively irrespective of the amount paid up or credited as paid up thereon.

(2.) A member who is in arrears in payment of any call, but whose shares have not been actually forfeited, is not entitled to share in such distribution until the amount owing in respect of the call has been fully paid and satisfied.

331. If a no liability company ceases to carry on business within twelve months of its incorporation, shares issued for cash rank on a winding up, to the extent of the capital contributed by subscribing shareholders, in priority to those issued to vendors or promoters or both for consideration other than cash.

Distribution of surplus where cessation of business within twelve months.
Vic. s. 280.
Tas. s. 278.

332. Notwithstanding anything in the memorandum or articles of a no liability company, the holders of any shares issued to vendors or promoters are not entitled to any preference on the winding up of the company.

As to rights attaching to preference shares issued to promoters.
Vic. s. 281.
Tas. s. 279.

333.—(1.) Without the sanction of a special resolution of the company, the directors of a no liability company shall not—

Restrictions on tribute arrangements.
Vic. s. 282.
Tas. s. 280.

(*a*) let the whole or portion of a mine or claim on tribute; or

(*b*) make any contract for working any land on tribute.

(2.) The last preceding sub-section does not prevent the directors of a no liability company from letting the whole or portion of a mine or claim on tribute, or making any contract for working any land on tribute, for any period not exceeding three months without the sanction of such a resolution if no such letting or contract has been made within the period of two years immediately preceding the proposed letting or contract.

Division 2.—Investment Companies.

334.—(1.) In this Division, unless the contrary intention appears—

Interpretation.
Vic. s. 284.
W.A. s. 380.
Tas. s. 282.

"investment company" means a corporation declared by the Attorney-General in pursuance of the next succeeding sub-section to be an investment company;

"net tangible assets" means tangible assets at book value, less total liability at book value and less any aggregate amount by which the book value of the marketable securities held by the corporation exceeds their market value.

(2.) The Attorney-General may, by notice published in the *Gazette*, declare to be an investment company any corporation which is engaged primarily in the business of investment in marketable securities for the purpose of revenue and for profit and not for the purpose of exercising control.

Restriction on borrowing by investment companies. Vic. s. 285. W.A. s. 381. Tas. s. 283.

335.—(1.) An investment company shall not borrow an amount if that amount, or the sum of that amount and amounts previously borrowed by it and not repaid, exceeds an amount equivalent to fifty per centum of its net tangible assets.

(2.) An investment company shall not borrow an amount otherwise than by the issue of debentures if that amount, or the sum of that amount and amounts previously borrowed by it otherwise than by the issue of debentures and not repaid, exceeds an amount equivalent to twenty-five per centum of its net tangible assets.

(3.) In the last preceding sub-section, " debentures " does not include a debenture—

(*a*) that is redeemable, except at the option of the borrower exercised not earlier than two and one half years after the date of issue of the debenture, within less than five years after that date; or

(*b*) that is issued to a bank as security for an overdraft.

Restriction on investments of investment companies. Vic. s. 286. W.A. s. 382. Tas. s. 284.

336.—(1.) An investment company shall not invest an amount in a corporation if that amount, or the sum of that amount and amounts previously invested by it in that corporation and still so invested, exceeds an amount equivalent to ten per centum of the net tangible assets of the investment company.

(2.) An investment company shall not invest an amount in the ordinary shares of a corporation if that amount, or the sum of that amount and amounts previously invested by it in the ordinary shares of that corporation and still so invested, exceeds an amount equivalent to five per centum of the subscribed ordinary share capital of the corporation.

Restriction on underwriting by investment companies. Vic. s. 287. W.A. s. 383. Tas. s. 285.

337.—(1.) An investment company shall not underwrite any issue of authorized securities to an amount that, when added to the amount or amounts, if any, to which it has previously underwritten a current issue or issues of other authorized securities (not being an amount or amounts in respect of which the underwriting obligation has been discharged) exceeds an amount equivalent to forty per centum of its net tangible assets.

(2.) An investment company shall not underwrite any issue of non-authorized securities to an amount that, when added to the amount or amounts, if any, to which it has previously underwritten a current issue or issues of other non-authorized securities (not being an amount or amounts in respect of which the underwriting obligation has been discharged) exceeds an amount equivalent to twenty per centum of its net tangible assets.

(3.) Where—

(*a*) an investment company has underwritten any issue of securities and, in relation to the underwriting, has not contravened sub-section (1.) or (2.) of this section; and

(*b*) the investment company, as a result of the underwriting, invests in a corporation, being an investment contrary to the last preceding section,

the investment company shall be deemed not to have contravened a provision of that section by reason of so investing in the corporation if, at the expiration of twelve months after so investing—

(*c*) the amount invested by it in the corporation does not exceed an amount equivalent to ten per centum of the net tangible assets of the investment company; and

(*d*) it does not hold more than five per centum of the subscribed ordinary share capital of the corporation.

(4.) This section extends to and in relation to sub-underwriting as if the sub-underwriting were underwriting.

(5.) In this section—

"authorized securities" means securities in which, by any Act, Ordinance of the Territory or of any other Territory of the Commonwealth, State Act or Act of New Zealand, trustees are authorized to invest trust funds in their hands;

"non-authorized securities" means securities other than authorized securities.

Special requirements as to articles and prospectus. Vic. s. 288. W.A. s. 384. Tas. s. 286.

338.—(1.) An investment company shall not issue a prospectus or permit a prospectus to be issued on its behalf unless the prospectus specifies—

(*a*) the type of security in which, in accordance with the objects of the company, the company may invest; and

(*b*) whether it is among the objects of the company to invest within the Commonwealth or outside the Commonwealth, or both.

(2.) After the expiration of three months after an investment company has been declared to be an investment company, the investment company shall not borrow or invest any moneys, or underwrite or sub-underwrite any issue of securities, unless the articles of the company specify the matters referred to in paragraphs (*a*) and (*b*) of the last preceding sub-section.

Not to hold shares in other investment companies.
Vic. s. 289.
W.A. s. 385.
Tas. s. 287.

339.—An investment company shall not purchase, or (after the expiration of three years after it is declared to be an investment company) hold, any shares in or debentures of—

(*a*) any other investment company; or

(*b*) any corporation incorporated in any State, in any other Territory of the Commonwealth or in New Zealand which is engaged primarily in the business of investment in marketable securities for the purpose of revenue and for profit and not for the purpose of exercising control and which is declared by the Attorney-General by notice published in the *Gazette* to be a corporation in relation to which this paragraph applies.

Not to speculate in commodities.
Vic. s. 290.
W.A. s. 386.
Tas. s. 288.

340.—(1.) An investment company shall not, for the purpose of profit, buy or sell or deal in any raw materials or manufactured goods, whether in existence or not, otherwise than by investing in companies trading in such materials or goods.

(2.) The last preceding sub-section does not apply to or in relation to—

(*a*) any buying, selling or dealing by an investment company in pursuance of a contract entered into by the investment company before it was declared to be an investment company; or

(*b*) the selling of or the dealing in raw materials or manufactured goods acquired by the investment company before it was so declared.

Balance-sheets and accounts.
Vic. s. 291.
W.A. s. 387.
Tas. s. 289.

341.—(1.) An investment company shall state under separate headings in every balance-sheet of the company, in addition to any other matters required to be stated therein—

(*a*) the investments of the company of a kind not referred to in paragraph (*h*) of clause 2 of the Ninth Schedule; and

(*b*) the manner in which the investments of the company have been valued.

(2.) An investment company shall attach to every such balance-sheet—

(*a*) a complete list of all purchases and sales of securities by the company during the period to which the accounts relate together with a statement of the total amount of brokerage paid or charged by the company during that period and the proportion thereof paid to any stock or share broker, or any employee or nominee of any stock or share broker, who is an officer of the company; and

(*b*) a complete list of all the investments of the company as at the date of the balance-sheet showing the descriptions and quantities of such investments.

(3.) An investment company shall show separately in the profit and loss account, in addition to any other matters required to be shown therein, income from underwriting, including sub-underwriting.

Investment fluctuation reserve.
Vic. s. 292.
W.A. s. 388.
Tas. s. 290.

342.—(1.) The net profits and losses of an investment company from the purchase and sale of securities shall be respectively credited and debited by the company to a reserve account to be kept by it and to be called " the investment fluctuation reserve ".

(2.) The investment fluctuation reserve is not available for the payment of dividends.

(3.) The investment fluctuation reserve is available for the payment of income tax payable in respect of profits made on the sale of securities.

Penalties.
Vic. s. 293.
W.A. s. 389.
Tas. s. 291.

343.—(1.) If default is made by an investment company in complying with the provisions of this Division, the investment company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Penalty: One thousand pounds.

Default penalty: One hundred pounds.

(2.) A transaction entered into by the company is not invalid by reason only of such default.

Division 3.—*Foreign Companies.*

Application and interpretation.
U.K. ss. 406–423.
N.S.W. s. 61.
Vic. s. 294.
Qld. ss. 321, 335.
S.A. s. 351.
W.A. s. 328.
Tas. s. 292 (1.)

344.—(1.) This Division applies to a foreign company only if it has a place of business, or is carrying on business, within the Territory.

(2.) In this Division, unless the contrary intention appears—

" agent " means the person named in a memorandum of appointment or power of attorney lodged under paragraph (*e*) of sub-section (1.), or under sub-section (8.), of section three hundred and forty-six of this Ordinance or under any corresponding previous law of the Territory;

" carrying on business " includes establishing or using a share transfer or share registration office or administering, managing or otherwise dealing with property situated in the Territory as an agent, legal personal representative or trustee, whether by servants or agents or otherwise, and " to carry on business " has a corresponding meaning.

(3.) Notwithstanding the last preceding sub-section, a foreign company shall not be regarded as carrying on business within the Territory for the reason only that within the Territory it—

(*a*) is or becomes a party to any action or suit or any administrative or arbitration proceeding or effects settlement of an action, suit or proceeding or of any claim or dispute;

(*b*) holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs;

(*c*) maintains any bank account;

(*d*) effects any sale through an independent contractor;

(*e*) solicits or procures any order which becomes a binding contract only if the order is accepted outside the Territory;

(*f*) creates evidence of any debt or creates a charge on real or personal property;

(*g*) secures or collects any of its debts or enforces its rights in regard to any securities relating to such debts;

(*h*) conducts an isolated transaction that is completed within a period of thirty-one days, not being one of a number of similar transactions repeated from time to time; or

(*i*) invests any of its funds or holds any property.

Power of foreign companies to hold land.
S.A. s. 355.
Qld. s. 328.

345. A foreign company registered under this Division has power to hold land in the Territory.

Documents, &c., to be lodged by foreign companies having place of business in the Territory.
U.K. s. 407.
N.S.W. s. 62.
Vic. s. 295.
Qld. ss. 322, 325, 333.
S.A. s. 352 (1).
W.A. s. 329.
Tas. s. 293.

346.—(1.) A foreign company shall, within one month after it establishes a place of business or commences to carry on business within the Territory, lodge with the Registrar for registration—

(*a*) a certified copy of the certificate of its incorporation or registration issued in its place of incorporation or origin or a document of similar effect;

(*b*) a certified copy of its charter, statute, memorandum, memorandum and articles or other instrument constituting or defining its constitution;

(*c*) a list in the prescribed form of its directors containing similar particulars with respect to its directors as are by this Ordinance required to be contained in the register of the directors, managers and secretaries of a company incorporated under this Ordinance;

(*d*) where the list includes directors resident in the Territory who are members of the local board of directors, a memorandum duly executed by or on behalf of the foreign company stating the powers of the local directors;

(*e*) a memorandum of appointment or power of attorney under the seal of the foreign company or executed on its behalf in such manner as to be binding on the company (being a memorandum or power of attorney verified by statutory declaration in the prescribed manner) stating the name and address, or names and addresses, of one or more persons resident in this Territory, not including a foreign company, authorized to accept on its behalf service of process and any notices required to be served on the company;

(*f*) notice in the prescribed form of the situation of its registered office in the Territory and, unless the office is open and accessible to the public for at least five hours between ten o'clock in the forenoon and four o'clock in the afternoon of each day (Saturdays, Sundays and public holidays excepted), the days and hours during which it is open and accessible to the public; and

(*g*) a statutory declaration in the prescribed form made by the agent of the company,

and the Registrar shall register the company under this Division by registration of the documents.

(2.) Where a memorandum of appointment or power of attorney lodged with the Registrar in pursuance of paragraph (*e*) of the last preceding sub-section is executed by a person on behalf of the company, a copy of the deed or document by which that person is authorized to execute the memorandum of appointment or power of attorney, verified by statutory declaration in the prescribed manner, shall be lodged with the Registrar, and the copy shall, for all purposes, be regarded as an original.

(3.) Sub-section (1.) of this section applies to a foreign company which was not registered under the repealed Ordinance but which, immediately before the date of commencement of this Ordinance, had a place of business or was carrying on business within the Territory and, on that date, has a place of business or is carrying on business within the Territory, as if it established that place of business or commenced to carry on that business on that date.

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(4.) A foreign company shall have a registered office within the Territory to which all communications and notices may be addressed and which shall be open and accessible to the public for not less than three hours between the hours of nine o'clock in the morning and five o'clock in the evening of each day, Saturdays, Sundays and public holidays excepted.

(5.) An agent shall, until he ceases to be such in accordance with sub-section (7.) of this section—

(*a*) continue to be the agent of the company;

(*b*) be answerable for the doing of all such acts, matters and things as are required to be done by the company by or under this Ordinance; and

(*c*) be personally liable to all penalties imposed on the company for any contravention of any of the provisions of this Ordinance unless he satisfies the court hearing the matter that he should be not so liable.

(6.) A foreign company or its agent may lodge with the Registrar a notice in writing in the prescribed form stating that the agent has ceased to be the agent or will cease to be the agent on a date specified in the notice.

(7.) The agent in respect of whom the notice has been lodged shall cease to be an agent on the expiration of a period of twenty-one days after the date of lodgment of the notice or on the date of the appointment of another agent the memorandum of whose appointment has been lodged in accordance with the next succeeding sub-section, whichever is the earlier, but if the notice states a date on which he is to so cease and the date is later than the expiration of that period, on that date.

(8.) Where—

(*a*) an agent ceases to be the agent and the company is then without an agent in the Territory; and

(*b*) the company continues to carry on business or has a place of business in the Territory,

it shall, within twenty-one days after the agent ceases to be such, appoint an agent and lodge a memorandum of his appointment and a statutory declaration in accordance with sub-section (1.) of this section and, if not already lodged in pursuance of sub-section (2.) of this section, a copy of the deed, document or power of attorney referred to in that sub-section verified in accordance with that sub-section.

(9.) On the registration of a foreign company under this Division, the lodging with the Registrar of particulars of a change or alteration in a matter referred to in paragraph (*c*) or (*d*) of sub-section (1.) of the next succeeding section or the registration by the Registrar of a change or alteration in the name

of a foreign company, the Registrar shall issue a certificate in the prescribed form under his hand and seal, and the certificate shall be evidence in all courts of the particulars mentioned in the certificate.

(10.) Nothing in this section requires a foreign company which was registered under the repealed Ordinance immediately before the commencement of this Ordinance as a foreign company to register pursuant to this section, but such a company shall, within one month after the commencement of this Ordinance, lodge with the Registrar such of the documents specified in sub-section (1.) of this section as have not previously been lodged by it.

Return to be filed where documents, &c., altered.
U.K. s. 409.
N.S.W. s. 67.
Vic. s. 296.
Qld. s. 324.
S.A. s. 359.
W.A. s. 335.
Tas. s. 294.

347.—(1.) Where any change or alteration is made in—

(*a*) the charter, statute, memorandum, articles or other instrument a copy of which is lodged by a foreign company with the Registrar under paragraph (*b*) of sub-section (1.) of the last preceding section;

(*b*) the directors of a foreign company;

(*c*) the agent or agents of a foreign company or the address of any agent;

(*d*) the situation of the registered office of a foreign company in the Territory or of the days or hours during which it is open and accessible to the public;

(*e*) the address of the registered office of a foreign company in its place of incorporation or origin;

(*f*) the name of a foreign company; or

(*g*) the powers of any directors resident in the Territory who are members of the local board of directors of the foreign company,

the foreign company shall, within one month or within such further period as the Registrar in special circumstances allows after the change or alteration, lodge with the Registrar notice in the prescribed form of the change or alteration and such other documents as the regulations require.

(2.) If a foreign company increases its authorized share capital, it shall, within one month or within such further period as the Registrar in special circumstances allows after such increase, lodge with the Registrar notice in the prescribed form of the amount from which and of the amount to which it has been so increased.

(3.) If a foreign company not having a share capital increases the number of its members beyond the registered number, it shall, within one month or within such further period as the Registrar in special circumstances allows after the increase was resolved on or took place, lodge with the Registrar notice in the prescribed form of the increase.

Balance-sheets and annual returns.
U.K. s. 410.
N.S.W. s. 68.
Vic. s. 297.
Qld. s. 327.
S.A. s. 358.
W.A. s. 334.
Tas. s. 295.

348.—(1.) Subject to this section, a foreign company shall, at least once in every calendar year and at intervals of not more than fifteen months, lodge with the Registrar a copy of its balance-sheet made up to the end of its last financial year in such form and containing such particulars and including copies of such documents as the company is required to prepare by the law for the time being applicable to the company in the place of its incorporation or origin, together with a statutory declaration in the prescribed form verifying that the copies are true copies of the documents so required.

(2.) The Registrar may, if he is of the opinion that the balance-sheet and other documents referred to in the last preceding sub-section do not sufficiently disclose the company's financial position, require the company to lodge a balance-sheet within such period, in such form and containing such particulars and including such documents as the Registrar by notice in writing to the company requires, but this sub-section does not authorize the Registrar to require a balance-sheet to contain any particulars or include any documents that would not be required to be furnished if the company were a public company incorporated under this Ordinance.

(3.) The company shall comply with the requirements set out in the notice.

(4.) Where a foreign company is not required by the law of the place of its incorporation or origin to prepare a balance-sheet, the company shall prepare and lodge with the Registrar a balance-sheet within such period, in such form and containing such particulars and including such documents as the company would have been required to prepare if the company were a public company incorporated under this Ordinance.

(5.) Subject to the next succeeding sub-section, this section does not apply to or in relation to a foreign company—

(*a*) which is an exempt private company under the law of the United Kingdom relating to companies;

(*b*) which is included in a class of corporations which the Attorney-General has declared, by notice published in the *Gazette*, to be a class of corporations of a kind the same or substantially the same as exempt proprietary companies under this Ordinance;

(*c*) which is included in a class of corporations which the Attorney-General has declared, by notice published in the *Gazette*, to be a class of corporations of a kind the same or substantially the same as proprietary companies under this

Ordinance, where no beneficial interest in any share in the company is held, directly or indirectly, otherwise than by a natural person;

(*d*) which is a corporation incorporated in the United Kingdom, or in a State or in another Territory of the Commonwealth, and which has, by the law of the place of its incorporation, exemptions and privileges similar to those which are provided for in section twenty-four of this Ordinance; or

(*e*) which is an association incorporated in a State or in another Territory of the Commonwealth under a law of that place which makes special provision for the incorporation of associations which are formed for the purpose of providing recreation or amusement, or promoting commerce, industry, art, science, religion, charity, pension or superannuation schemes or any other object useful to the community and which are by their constitutions prohibited from the payment of dividends to their members.

(6.) A foreign company referred to in paragraph (*a*), (*b*) or (*c*) of the last preceding sub-section shall, at least once in every calendar year, lodge with the Registrar a return in the prescribed form made up to the date of its annual general meeting.

(7.) The return shall be lodged within a period of one month after the date to which it is made up or within such further period as the Registrar, in special circumstances, allows.

Fees payable by foreign companies in certain cases.

349.—(1.) Where, on the registration of a company as a foreign company or on the lodging by a foreign company of a notice under sub-section (2.) of section three hundred and forty-seven of this Ordinance, the Registrar certifies in writing that he is satisfied that the company has established in the Territory a share transfer or share registration office but has not otherwise carried on, is not otherwise carrying on and does not propose otherwise to carry on business in the Territory, the liability to pay such part, if any, of the fee payable under item 16 or 17 of the Second Schedule in respect of the registration or the lodging of the notice as exceeds Five hundred pounds is, by force of this section, suspended until the company commences otherwise to carry on business in the Territory or fails to comply with the next succeeding sub-section, whichever first occurs, but thereupon the company is liable to pay to the Registrar that part of that fee.

(2.) A company shall, so long as a suspension under the last preceding sub-section of liability to pay a fee in respect of the company continues, lodge with the Registrar in each year at the time when a copy of its balance sheet or a return under the last preceding section is lodged with the Registrar a notice in the prescribed form with respect to the business being carried on in the Territory by the company.

(3.) Where a foreign company in respect of which the Registrar has issued a certificate under sub-section (1.) of this section commences to carry on business in the Territory otherwise than by reason of establishing or using a share transfer or share registration office, the company shall, within fourteen days after so commencing, lodge with the Registrar notice thereof in the prescribed form.

Obligation to exhibit name of foreign company, &c.
U.K. s. 411.
N.S.W. s. 69.
Vic. s. 298.
Qld. s. 330.
S.A. s. 360.
W.A. s. 336.
Tas. s. 296.

350. A foreign company shall—

(*a*) except in the case of a banking corporation, conspicuously exhibit outside its registered office and every place of business established by it in the Territory its name and the place where it is formed or incorporated;

(*b*) except in the case of a banking corporation, cause its name and the place where it is formed or incorporated to be stated in legible characters in all its bill-heads and letter paper and in all its notices, prospectuses and other official publications; and

(*c*) if the liability of its members is limited (unless the last word of its name is the word "Limited" or the abbreviation "Ltd."), cause notice of that fact—

(i) to be stated in legible characters in every prospectus issued by it and in all its bill-heads, letter paper, notices and other official publications in the Territory; and

(ii) except in the case of a banking corporation, to be exhibited outside its registered office and every place of business established by it in the Territory.

Service of notice.
U.K. s. 412.
N.S.W. s. 66.
Vic. s. 299.
Qld. s. 326.
S.A. s. 356.
W.A. s. 333.
Tas. s. 297

351. A document required to be served on a foreign company shall be sufficiently served—

(*a*) if it is addressed to the foreign company and left at or sent by post to its registered office in the Territory; or

(*b*) if it is addressed to an agent of the company and left at or sent by post to his registered address.

Cesser of business in the Territory.
U.K. s. 413 (2).
N.S.W. s. 72.
Vic. s. 300.
Qld. ss. 340–341A.
S.A. s. 361.
W.A. ss. 337,403.
Tas. s. 298.

352.—(1.) If a foreign company ceases to have a place of business or to carry on business in the Territory, it shall within seven days after so ceasing lodge with the Registrar notice in the prescribed form of that fact, and, if the company has ceased both to have a place of business and to carry on business in the Territory, its obligation to lodge any document (not being a document that ought to have been lodged before the company so ceased) with the Registrar ceases, and the Registrar shall, upon the expiration of twelve months after the lodging of the notice, remove the name of the foreign company from the register.

(2.) If a foreign company goes into liquidation or is dissolved in its place of incorporation or origin—

(*a*) each person who, immediately prior to the commencement of the liquidation proceedings was an agent, shall, within one month after the commencement of the liquidation or the dissolution or within such further time as the Registrar in special circumstances allows, lodge or cause to be lodged with the Registrar notice in the prescribed form of that fact and, when a liquidator is appointed, notice of such appointment; and

(*b*) the liquidator shall, until a liquidator for the Territory is duly appointed by the Court, have the powers and functions of a liquidator for the Territory.

(3.) A liquidator of a foreign company appointed for the Territory by the Court, or a person exercising the powers and functions of such a liquidator—

(*a*) shall, before any distribution of the foreign company's assets is made, by advertisement in a newspaper circulating generally in each State or Territory of the Commonwealth where the foreign company had been carrying on business prior to the liquidation if no liquidator has been appointed for that State or Territory, invite all creditors to make their claims against the foreign company within a reasonable time prior to the distribution;

(*b*) shall not, without obtaining an order of the Court, pay out any creditor to the exclusion of any other creditor of the foreign company; and

(*c*) shall, unless otherwise ordered by the Court, recover and realize only the assets of the foreign company that are in the Territory and shall pay the net amount so recovered and realized to the liquidator of that foreign company for the place where it was formed or incorporated.

(4.) Where a foreign company has been wound up so far as its assets in the Territory are concerned and there is no liquidator for the place of its incorporation or origin, the liquidator may apply to the Court for directions as to the disposal of the net amount recovered in pursuance of the last preceding sub-section.

(5.) On receipt of a notice from an agent that the company has been dissolved, the Registrar shall remove the name of the company from the register.

(6.) Where the Registrar has reasonable cause to believe that a foreign company has ceased to carry on business or to have a place of business in the Territory, the provisions of this Ordinance relating to the striking off the register of the names of defunct companies extend and apply accordingly with such adaptations as are necessary.

Restriction on use of certain names. Vic. s. 301. Qld. s. 334. Tas. s. 299.

353.—(1.) Except with the consent of the Attorney-General, a foreign company shall not be registered by a name that is, in the opinion of the Registrar, undesirable or is a name, or a name of a kind, that the Attorney-General has, under section twenty-two of this Ordinance, directed the Registrar not to accept for registration.

(2.) Except with the consent of the Attorney-General, a change in the name of a foreign company shall not be registered if the new name of the company is, in the opinion of the Registrar, undesirable or is a name, or a name of a kind, that the Attorney-General has, under section twenty-two of this Ordinance, directed the Registrar not to accept for registration, notwithstanding that particulars of the change have been lodged in accordance with section three hundred and forty-seven of this Ordinance.

(3.) A foreign company to which this Division applies shall not use in the Territory any name other than that under which it is registered under this Division or under any other Ordinance.

(4.) If default is made in complying with the last preceding sub-section, the foreign company, each officer of the company who is in default and each agent of the company who knowingly authorizes or permits the default is guilty of an offence against this Ordinance.

Penalty: One hundred pounds.

Default penalty: Ten pounds.

The branch register. S.A. s. 358A.

354.—(1.) Subject to this section, where a member of a foreign company which has a share capital is resident in the Territory, the company shall keep at its registered office in the Territory or at some other place in the Territory a branch register for the purpose of registering shares of members resident in the Territory who apply to have the shares registered therein.

(2.) A foreign company is not obliged to keep a branch register pursuant to the last preceding sub-section until after the expiration of one month, in the case of a foreign company incorporated within the Commonwealth, and two months, in the case of any other foreign company, from the receipt by it of an application in writing by a member resident in the Territory for registration in its branch register in the Territory of the shares held by the member.

(3.) If default is made in complying with sub-section (1.) of this section, the foreign company, each officer of the company who is in default and each agent of the company who knowingly authorizes or permits the default is guilty of an offence against this Ordinance.

Default penalty: Ten pounds.

(4.) This section does not apply to a foreign company which, by its constitution, prohibits any invitation to the public to subscribe for shares in the company.

(5.) A register required to be kept by this section shall be kept in the manner provided by Division 4 of Part V. as though the register were the register of a company and transfers shall be effected on such register in the same manner and at the same charges as on the principal register of the company, and transfers lodged at its registered office in the Territory are binding on the company, and the Court has the same powers in relation to rectification of the register as it has in respect of the register of a company incorporated in the Territory.

(6.) Where a foreign company opens a branch register in the Territory, it shall, within fourteen days after the opening of the register, lodge with the Registrar notice in the prescribed form of the fact specifying the address where the register is kept, and, where immediately before the commencement of this Ordinance a foreign company was maintaining a branch register in the Territory and continues to maintain it on the date of commencement of this Ordinance, it shall, for the purposes of this sub-section, be deemed to have opened the branch register on that date.

(7.) Where a change is made in the place where the register is kept or where the register is discontinued, the company shall within fourteen days of the change or discontinuance lodge notice in the prescribed form of the change or discontinuance with the Registrar.

(8.) Where a company or corporation is entitled pursuant to a law of the place of incorporation of a foreign company corresponding with section one hundred and eighty-five of this Ordinance to give notice to a dissenting shareholder in that

foreign company that it desires to acquire any of his shares registered on a branch register kept in the Territory, this section shall cease to apply to that foreign company until—

(*a*) the shares have been acquired; or

(*b*) that company or corporation has ceased to be entitled to acquire the shares.

Registration of shares in branch register.

355. Subject to this Ordinance, on application in that behalf by a member resident in the Territory, a foreign company shall register in a branch register of the company the shares held by a member which are registered in any other register kept by the company.

Removal of shares from branch register.

356. Subject to this Ordinance, on application in that behalf by a member holding shares registered in a branch register, a foreign company shall remove the shares from the branch register and register them in such other register as is specified in the application.

Index of members, inspection and closing of branch registers.

357. Sections one hundred and fifty-one, one hundred and fifty-two and one hundred and fifty-three of this Ordinance apply respectively, with such adaptations as are necessary, to the index of persons holding shares in a branch register and to the inspection and the closing of the register.

Application of provisions Ordinance relating to transfer.

358. Sections ninety-five, ninety-six, sub-section (1.) of section ninety-seven, sub-sections (1.) and (3.) of section ninety-nine and section one hundred and fifty-five of this Ordinance apply, with such adaptations as are necessary, with respect to the transfer of shares on and the rectification of the branch register of a foreign company.

Branch register to be evidence.

359. A branch register is evidence of any matters by this Division directed or authorized to be inserted therein.

Certificate *re* share holding.

360. A certificate under the seal of a foreign company specifying any shares held by any member of that company and registered in the branch register is evidence of the title of the member to the shares and the registration of the shares in the branch register.

Penalties. Vic. s. 302.

361. If default is made by a foreign company in complying with any provision of this Division, other than a provision in which a penalty or punishment is expressly mentioned, the company, each officer of the company who is in default and each agent of the company who knowingly authorizes or permits the default is guilty of an offence against this Ordinance.

Default penalty: Ten pounds.

PART XII.—GENERAL.

Division 1.—Enforcement of Ordinance.

Service of documents on company. U.K. s. 437. N.S.W. s. 359. Vic. s. 252. Qld. s. 380. S.A. s. 375 (1). W.A. s. 410 (1). Tas. s. 306.

362. A document may be served on a company by leaving it at or sending it by post to the registered office of the company.

Costs. U.K. s. 447. N.S.W. s. 360. Vic. s. 253. Qld. s. 372. S.A. s. 381. W.A. s. 416. Tas. s. 307.

363.—(1.) Where a company is plaintiff in any action or other legal proceeding, the court having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs and stay all proceedings until the security is given.

(2.) The costs of any proceedings before a court under this Ordinance shall be borne by such party to the proceeding as the court, in its discretion, directs.

Disposal of shares of shareholder whose whereabouts unknown.

364.—(1.) Where by the exercise of reasonable diligence a company is unable to discover the whereabouts of a shareholder for a period of not less than ten years, the company may cause an advertisement to be published in a daily newspaper circulating in the place shown in the register of members as the address of the shareholder stating that the company after the expiration of one month from the date of the advertisement intends to transfer the shares to the Treasurer.

(2.) If after the expiration of one month from the date of the advertisement the whereabouts of the shareholder remain unknown, the company may transfer the shares held by the shareholder in the company to the Treasurer and for that purpose may execute for and on behalf of the owner a transfer of those shares to the Treasurer.

(3.) The Treasurer shall sell or dispose of any shares so received in such manner and at such time as he thinks fit and shall pay the proceeds of the sale into the Consolidated Revenue Fund.

(4.) When the Treasurer is satisfied that a person is entitled to the proceeds of the sale of any share transferred to the Treasurer under this section, the Treasurer shall pay an amount equal to the proceeds of the sale of the share to that person.

Power to grant relief. U.K. s. 448. N.S.W. s. 361. Vic. s. 254. Qld. s. 379. S.A. s. 377. W.A. s. 412. Tas. s. 308.

365.—(1.) If, in any proceeding for negligence, default, breach of duty or breach of trust against a person to whom this section applies, it appears to the court before which the proceedings are taken that he is or may be liable in respect thereof

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 or breach, the court may relieve him either wholly or partly from his liability on such terms as the court thinks fit.

(2.) Where a person to whom this section applies has reason to apprehend that a 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 has the same power to relieve him as under this section it would have had if it had been a court before which proceedings against him for negligence, default, breach of duty or breach of trust had been brought.

(3.) Where a case to which sub-section (1.) of this section applies is being tried by a judge with a jury, the judge after hearing the evidence may, if he is satified that the defendant ought in pursuance of that sub-section to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge thinks proper.

(4.) This section applies to a person who is—

(*a*) an officer of a corporation;

(*b*) employed by a corporation as auditor, whether or not he is an officer of the corporation;

(*c*) an expert; or

(*d*) a receiver, receiver and manager, liquidator or other person appointed or directed by the Court to carry out any duty under this Ordinance in relation to a corporation.

Irregularities in proceedings. N.S.W. s. 357. Vic. s. 256. Qld. s. 374. S.A. s. 380. W.A. s. 415. Tas. s. 310.

366.—(1.) A proceeding under this Ordinance is not invalidated by reason of any defect, irregularity or deficiency of notice or time unless the Court is of opinion that substantial injustice has been or may be caused thereby which cannot be remedied by any order of the Court.

(2.) The Court may if it thinks fit make an order declaring that such proceeding is valid notwithstanding any such defect, irregularity or deficiency.

(3.) Without affecting the generality of sub-sections (1.) and (2.) of this section or of any other provision of this Ordinance, where any omission, defect, error or irregularity (including the absence of a quorum at any meeting of a company or of the directors) has occurred in the management or administration of a company whereby—

(*a*) a breach of any of the provisions of this Ordinance has occurred;

(*b*) there has been default in the observance of the memorandum or articles of the company; or

(*c*) any proceedings at or in connexion with any meeting of the company or of the directors thereof, or any assemblage purporting to be such a meeting, have been rendered ineffective, including the failure to make or lodge any declaration of solvency pursuant to section two hundred and fifty-seven of this Ordinance,

the Court—

(*d*) may, either of its own motion or on the application of any interested person, make such order as it thinks fit to rectify, or cause to be rectified, or to negative or modify, or cause to be modified, the consequences in law of any such omission, defect, error or irregularity or to validate any act, matter or thing rendered or alleged to have been rendered invalid by or as a result of any such omission, defect, error or irregularity;

(*e*) shall, before making any such order, satisfy itself that such an order would not do injustice to the company or to any member or creditor thereof;

(*f*) where any such order is made, may give such ancillary or consequential directions as it thinks fit; and

(*g*) may determine what notice or summons is to be given to other persons of the intention to make any such application or of the intention to make such an order and whether and how it should be given or served and whether it should be advertised in any newspaper.

(4.) The Court (whether the company is in process of being wound up or not) may enlarge or abridge any time for doing any act or taking any proceeding allowed or limited by this Ordinance upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered although the application for the same is not made until after the time originally allowed or limited.

Privileged communications. U.K. s. 175. Vic. s. 257.

367. An inspector appointed under this Ordinance shall not require disclosure by a duly qualified legal practitioner of any privileged communication made to him in that capacity, except as respects the name and address of his client.

Production and inspection of books where offence suspected. U.K. s. 441. Vic. s. 258. Tas. s. 311.

368. If, on an application made to the Judge of the Court in chambers by the Attorney-General, there is shown to be reasonable cause to believe that a person has, while an officer of a company, committed an offence in connexion with the management of the company's affairs and that 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*) authorizing any person named therein to inspect such books or papers or any of them for the purpose of investigating and obtaining evidence of the offence; or

(*b*) requiring the secretary or such other officer as is named in the order to produce such books or papers or any of them to a person named in the order at a place so named.

Form of registers, &c. U.K. s. 436. Vic. s. 3 (3). S.A. s. 139 (4). W.A. s. 434. Tas. s. 3 (3), (4).

369.—(1.) For the purposes of this Ordinance, any register, index, minute book or book of account may be kept by making entries in a bound book or by recording the matters in question in any other manner.

(2.) Where any register, index, minute book or book of account required by this Ordinance to be kept is not kept by making entries in a bound book, but by some other means, reasonable precautions shall be taken for guarding against falsification and for facilitating its discovery and, where default is made in complying with this sub-section, the company and each officer of the company who is in default is guilty of an offence against this Ordinance.

Default penalty: Ten pounds.

Inspection of registers. Vic. s. 95 (4).

370.—(1.) Any register, minute book or document of a corporation which is by this Ordinance required to be available for inspection shall, subject to and in accordance with this Ordinance, be available for inspection at the place where, in accordance with this Ordinance, it is kept during the hours in which the registered office of the corporation in the Territory is accessible to the public.

(2.) A person permitted by this Ordinance to inspect any register, minute book or document of a corporation may make copies of or take extracts from it and any officer of the corporation who fails to allow any person so permitted to make a copy of or take extracts from the register, minute book or document, as the case may be, is guilty of an offence against this Ordinance.

Translations of instruments.

371.—(1.) Where, under this Ordinance, a corporation is required to lodge with the Registrar any instrument, certificate, contract or document, or a certified copy thereof, and it is not written in the English language, the corporation shall lodge at the same time with the Registrar a certified translation thereof.

(2.) Where under this Ordinance, a corporation is required to make available for public inspection any instrument, certificate, contract or document and it is not written in the English language, the corporation shall keep at its registered office in the Territory a certified translation thereof.

Certificate of incorporation *conclusive* evidence.
U.K. s. 15.
N.S.W. s. 30 (1).
Vic. s. 14 (4).
Qld. s. 27.
S.A. s. 26 (1).
Tas. s. 14 (4).

372. A certificate of incorporation under the hand and seal of the Registrar is conclusive evidence that all the requirements of this Ordinance in respect of registration and of matters precedent and incidental thereto have been complied with, and that the company referred to therein is duly incorporated under this Ordinance.

Court may compel compliance.
N.S.W. s. 101.
Vic. s. 95 (5).

373. If any person in contravention of this Ordinance refuses to permit the inspection of any register, minute book or document or to supply a copy of any register, minute book or document, the Court may by order compel an immediate inspection of the register, minute book or document or order the copy to be supplied.

Division 2.—Offences.

Restriction on offering shares, debentures, &c., for subscription or purchase.
N.S.W. s. 343.
Vic. s. 259.
Qld. s. 368.
S.A. s. 368.
W.A. s. 369.
Tas. s. 313.

374.—(1.) A person shall not, whether by appointment or otherwise, go from place to place offering shares for subscription or purchase to the public or any member of the public.

(2.) The last preceding sub-section does not apply in relation to the shares of a corporation where—

(*a*) the corporation has given notice in the prescribed form of its intention to apply for exemption from the provisions of that sub-section by advertisement published in the *Gazette* and in a daily newspaper published in the Territory; and

(*b*) the Attorney-General has, on the application of the corporation, exempted the corporation from the provisions of that sub-section by notice published in the *Gazette*.

(3.) A person shall not make an offer in writing to any member of the public (not being a person whose ordinary business it is to buy or sell shares, whether as principal or agent) of any shares for purchase unless the offer is accompanied by—

(*a*) a statement in writing (which shall be signed by the person making the offer and dated) containing such particulars as are required by this section to be included therein and otherwise complying with the requirements of this section; or

(*b*) in the case of shares in a corporation formed or incorporated outside the Territory, by such a statement or by a prospectus that complies with this Ordinance.

(4.) The last preceding sub-section does not apply—

(*a*) where the shares to which the offer relates are shares of a class which are quoted on, or in respect of which permission to deal has been granted by, any prescribed Stock Exchange and the offer so states and specifies the Stock Exchange;

(*b*) where the shares to which the offer relates are shares which a corporation has allotted or agreed to allot with a view to their being offered for sale by the public and such offer is accompanied by a document that complies with all enactments and rules of law as to prospectuses; or

(*c*) where the offer relates to—

(i) an interest to which the provisions of Division 5 of Part IV. apply and is accompanied by a statement in writing as required by that Division; or

(ii) deposits or loans to a corporation of the kind referred to in sub-section (4.) of section thirty-eight of this Ordinance.

(5.) The statement referred to in sub-section (3.) of this section shall not contain any matter other than the particulars required by this section to be included therein and shall not be in characters less large or less legible than any characters used in the offer or in any document sent therewith.

(6.) The statement referred to in sub-section (3.) of this section shall contain particulars as to—

(*a*) whether the person making the offer is acting as principal or agent and, if as agent—

(i) the name of his principal;

(ii) an address in the Territory where that principal can be served with process; and

(iii) particulars as to the remuneration payable by the principal to the agent;

(*b*) the date on which and the place where the corporation was incorporated and the address of its registered or principal office in its place of incorporation and in the Territory;

(*c*) the authorized share capital of the corporation, its issued share capital, its paid up share capital and the classes into which its share capital is divided and the rights of each class of shareholders in respect of capital, dividends and voting;

(*d*) the dividends, if any, paid by the corporation in respect of each class of shares during each of the five financial years immediately preceding the offer and, if no dividend has been paid in respect of shares of any particular class during any of those years, a statement to that effect;

(*e*) the total amount of any debentures issued by the corporation and outstanding at the date of the statement, together with the rate of interest payable thereon;

(*f*) the names and addresses of the directors;

(*g*) whether or not the shares offered are fully paid up and, if not, to what extent they are paid up;

(*h*) whether or not the shares are quoted on, or permission to deal therein has been granted by, any prescribed Stock Exchange and, if so, the name of each such Stock Exchange;

(*i*) where the offer relates to units—particulars of the names and addresses of the persons in whom the shares represented by the units are vested, the date of and the parties to any document defining the terms on which those shares are held and an address in the Territory where that document or a copy thereof can be inspected; and

(*j*) the last audited balance-sheet of the corporation.

(7.) In the last preceding sub-section, "corporation" means the corporation by which the shares to which the statement relates were or are to be issued.

(8.) A person who acts in contravention of this section is guilty of an offence against this Ordinance.

Penalty: Two hundred pounds or imprisonment for six months, or both, or, in the case of a second or subsequent offence, Five hundred pounds or imprisonment for twelve months, or both.

(9.) Where a person convicted of an offence under this section is a corporation, each officer concerned in the management of the corporation is guilty of the like offence unless he proves that the act constituting the offence took place without his knowledge or consent.

(10.) Where a person is convicted of an offence by reason of having made an offer in contravention of this section, the court before which he is convicted may order that any contract made as a result of the offer is void and may give such consequential directions as it thinks proper for the repayment of any money or the re-transfer of any shares, but an appeal against the order and any consequential directions lies to the Court.

(11.) In this section, " shares " means shares of a corporation (whether a corporation in existence or to be formed), and includes—

(*a*) debentures and units and, without affecting the generality of the word " debentures ", all such documents (including those referred to as " bonds ") as confer or purport to confer on the holder thereof any claim against a corporation, whether such claim is present or future, certain or contingent, or ascertained or sounding only in damages; and

(*b*) interests to which the provisions of Division 5 of Part IV. apply.

(12.) In this section, a reference to an offer or offering of shares for subscription or purchase shall be construed as including an offer of shares by way of barter or exchange and a reference to an offer in writing of shares shall be construed as including an offer by means of broadcasting, television or cinematograph, but, where an offer is made by means of broadcasting, television or cinematograph, the statement or prospectus by which the offer is required to be accompanied by virtue of subsection (3.) of this section shall be deemed to accompany the offer if—

(*a*) the statement or prospectus is prepared by the person on whose behalf the offer is made;

(*b*) the public are informed at the same time and by the same means as that by which the offer is made that a copy of the statement or prospectus will be supplied on request being made at a specified address; and

(*c*) where a request for a copy of a statement or prospectus is made at that address within one month after the offer was made—the person making the request is supplied with a copy within seven days after the request is made.

(13.) For the purposes of this section, a person shall not, in relation to a corporation, be regarded as not being a member of the public by reason only that he is a holder of shares in the corporation or a purchaser of goods from the corporation.

False and misleading statements. U.K. s. 438. Vic. s. 260. Qld. s. 376. S.A. ss. 387–388. W.A. s. 422. Tas. s. 315.

375.—(1.) A corporation which advertises, circulates or publishes any statement of the amount of its capital which is misleading or in which the amount of nominal or authorized capital is stated without the words " nominal " or " authorized ", or in which the amount of capital or authorized or subscribed capital is stated but the amount of paid up capital or the amount of any charge on uncalled capital is not stated, and each officer of the corporation who knowingly authorizes, directs or consents to such advertising, circulation or publication, is guilty of an offence against this Ordinance.

(2.) A person who, in any return, report, certificate, balance-sheet or other document required by or for the purposes of this Ordinance, wilfully makes a statement false in any material particular knowing it to be false is guilty of an offence against this Ordinance and may be punished either summarily or on indictment, but is not liable to be punished more than once in respect of the same offence.

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

Dividends payable from profits only. Vic. s. 261. Tas. s. 316.

376.—(1.) A dividend is not payable to the shareholders of a company except out of profits or pursuant to section sixty of this Ordinance.

(2.) A director or manager of a company who wilfully pays or permits to be paid any dividend out of what he knows is not profits, except pursuant to section sixty of this Ordinance—

(*a*) is, without prejudice to any other liability, guilty of an offence against this Ordinance; and

(*b*) is also liable to the creditors of the company for the amount of the debts due by the company to them respectively to the extent by which the dividends so paid have exceeded the profits, and such amount may be recovered by the creditors or the liquidator suing on behalf of the creditors.

Penalty: Five hundred pounds.

(3.) If the whole amount is recovered from one director or from the manager, he may recover contribution against any other person liable who has directed or consented to such payment.

(4.) Any liability imposed by this section on any person does not, on the death of such person, extend or pass to his executors or administrators, and the estate of any such person after his decease is not liable under this section.

(5.) In this section, " dividend " includes bonus and payment by way of bonus.

Penalty for improper use of words " Limited " and " No Liability ". U.K. s. 439. N.S.W. s. 33. Vic. s. 262. Qld. s. 369. S.A. s. 390. W.A. s. 423. Tas. s. 317.

377. If a person carries on business under any name or title of which " Limited " or " No Liability " or any abbreviation thereof is the final word or abbreviation, the person is, unless duly incorporated with limited liability or no liability, guilty of an offence against this Ordinance.

Default penalty: Ten pounds.

Restriction on use of word " Proprietary ". Vic. s. 22 (2).

378.—(1.) A company shall not use the word " Proprietary " or any abbreviation thereof as part of its name if it does not fulfil the requirements required by this Ordinance to be fulfilled by proprietary companies.

(2.) A company and each officer of a company who commits, causes, directs or authorizes a breach of this section is guilty of an offence against this Ordinance.

Default penalty: Ten pounds.

General penalty provisions. Vic. s. 263. S.A. s. 391. W.A. s. 424. Tas. s. 318.

379.—(1.) A person who—

(*a*) does that which by or under this Ordinance he is forbidden to do;

(*b*) does not do that which by or under this Ordinance he is required or directed to do; or

(*c*) otherwise contravenes or fails to comply with any provision of this Ordinance,

is guilty of an offence against this Ordinance.

(2.) A person who is guilty of an offence against this Ordinance for which a penalty is not expressly provided is punishable upon conviction by a fine not exceeding Fifty pounds.

(3.) In the last preceding sub-section, " penalty " does not include a default penalty.

(4.) For the purposes of a provision of this Ordinance which provides that an officer of a company or corporation who is in default is guilty of an offence against this Ordinance or is liable to a penalty or punishment, the phrase " officer who is in default " or any like phrase includes an officer of the company or corporation who knowingly and wilfully authorizes or permits the commission of the offence.

Default penalties. U.K. s. 440. N.S.W. s. 355. Vic. s. 264. Qld. s. 378. S.A. s. 392. Tas. s. 319.

380.—(1.) Where in, or at the foot of, any section or part of a section of this Ordinance there appears the expression " Default penalty ", it indicates that a person who is convicted of an offence against this Ordinance in relation to that section or part is guilty of a further offence against this Ordinance if the offence continues after he is so convicted and is liable to an additional penalty for each day during which the offence so continues of not more than the amount expressed in the section or part as the amount of the default penalty.

(2.) Where an offence is committed by a person by reason of his failure to comply with a provision of this Ordinance by or under which he is required or directed to do anything within a particular period, that offence, for the purposes of the last preceding sub-section, shall be deemed to continue so long as the thing so required or directed to be done by him remains undone, notwithstanding that such period has elapsed.

Proceedings how and when taken. U.K. ss. 442, 445. Vic. s. 265. Qld. ss. 370–371. S.A. s. 395. Tas. s. 320.

381.—(1.) An offence against this Ordinance which is punishable by imprisonment for a period exceeding six months may, unless the contrary intention appears, be punished either summarily or on indictment, but an offender is not liable to be punished more than once in respect of the same offence.

(2.) An offence against this Ordinance to which the last preceding sub-section does not apply is, unless the contrary intention appears, punishable summarily.

(3.) Except where provision is otherwise made in this Ordinance, proceedings for the summary prosecution of an offence against this Ordinance may be taken by the Registrar or, with the written consent of the Attorney-General, by any person.

(4.) Notwithstanding anything in any other law of the Territory, proceedings for the summary prosecution of an offence against this Ordinance may be brought within the period of three years after the commission of the offence or, with the written consent of the Attorney-General, at any later time.

Division 3.—Miscellaneous.

Non-application of rule against perpetuities to certain schemes. N.S.W. s. 346. S.A. s. 402.

382.—(1.) The rule of law relating to perpetuities does not apply, and shall be deemed never to have applied, to the trusts of any fund or scheme for the benefit of any employee of a company, whether the fund or scheme was established before or after the commencement of this Ordinance.

(2.) In this section—

"company" includes—

(*a*) any company or society formed, whether before or after the commencement of this Ordinance, in pursuance of any Act, Imperial Act or Ordinance, or of letters patent or royal charter, or otherwise duly constituted according to law; and

(*b*) a foreign company;

"fund or scheme" includes any provident, superannuation, sick, accident, assurance, unemployment, pension, co-operative benefit or other like fund, scheme, arrangement or provision;

"employee" includes a director or any person at any time in the employment of a company, and the wife, child, grandchild, parent or any dependant of a director or such a person, and any other person entitled to or capable of receiving any benefit under any fund or scheme.

Power of Court to give directions with respect to meetings ordered by the Court.

383. Where, under this Ordinance, the Court orders a meeting to be summoned, the Court may, subject to this Ordinance, give such directions with respect to the summoning, holding or conduct of the meeting, and such ancillary or consequential directions in relation to the meeting, as it thinks fit.

Statutory declarations.

384. Where a statutory declaration is required to be made for the purposes of a provision of this Ordinance, a declaration for the purposes of that provision purporting to be made at a place outside the Commonwealth in accordance with the requirements of the law of that place relating to declarations shall, for the purposes of that provision, be deemed to be a statutory declaration.

Administration.

385. This Ordinance shall be administered by the Attorney-General.

Regulations.
N.S.W. s. 380 (1), (3).
Vic. s. 11.
Qld. s. 102.
S.A. s. 373.
W.A. s. 408.
Tas. s. 324.

386. The Attorney-General may make regulations, not inconsistent with this Ordinance, prescribing all matters which by this Ordinance are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance, and, in particular—

(*a*) making provision for or in relation to the keeping of registers by the Registrar and the lodging or registration of documents, including the time for and the manner of lodging or registration;

(*b*) prescribing forms for the purposes of this Ordinance;

(*c*) making provision for or in relation to meetings of creditors, of members and creditors or of contributories of a company or meetings of debenture holders, not being meetings ordered by the Court;

(*d*) requiring the verification, by statutory declaration, of any statement or information required for the purposes of this Ordinance;

(*e*) making provision for or in relation to the proof of debts in a winding up under Division 3 of Part X.;

(*f*) prescribing fees, not exceeding in any case Ten pounds, to be paid to the Registrar for or in respect of matters or things required to be done under or for the purposes of this Ordinance, being fees not provided for in the Second Schedule; and

(*g*) prescribing penalties not exceeding a fine of Twenty pounds for offences against the regulations.

THE SCHEDULES.

FIRST SCHEDULE. Section 4.

PART I.

Ordinances Repealed.

Companies Ordinance 1954.

Companies Ordinance 1961.

FIRST SCHEDULE—*continued.*

PART II.

Amendments of Ordinances.

First column. Ordinances amended.	Second column. Amendments.
Associations Incorporation Ordinance 1953–1961	Section 2— Omit from sub-section (1.) the definitions of " the Companies Acts ", " the Registrar " and " unauthorized name ", insert— " ' the Companies Ordinance ' means the *Companies Ordinance* 1962; " ' the Registrar ' has the same meaning as in the Companies Ordinance; " ' unauthorized name ', in relation to an association, means a name that is, in the opinion of the Registrar, undesirable or is a name, or a name of a kind, that the Attorney-General has, under section twenty-two of the Companies Ordinance, directed the Registrar not to accept for registration.". Section 17— Omit " Companies Acts " (wherever occurring), insert " Companies Ordinance ".
Australian Mutual Provident Society Ordinance 1945–1954	Section 10— Omit from sub-section (3.) " section sixty-two of the Companies Act, 1936, of the State of New South Wales, in its application to the Territory ", insert " section three hundred and forty-six of the *Companies Ordinance* 1962 ".
Business Names Ordinance 1956–1961	Section 24— Omit " section thirty-two of the Companies Act, 1936 of the State of New South Wales as applied in the Territory by virtue of the *Companies Ordinance* 1954–1961 ", insert " section twenty-two of the *Companies Ordinance* 1962 ".
Companies (Unclaimed Assets and Moneys) Ordinance 1950–1954	Omit section 3, insert— " 3. In this Ordinance, ' company ' means— (*a*) a body corporate that is a company or a foreign company for the purposes of the *Companies Ordinance* 1962; and (*b*) a co-operative society registered under the *Co-operative Societies Ordinance* 1939–1962.".
Co-operative Societies Ordinance 1939–1958, as amended by the *Co-operative Societies Ordinance* 1962	Section 4— Omit the definition of " the Companies Act ", insert— " ' the Companies Ordinance ' means the *Companies Ordinance* 1962;". Omit section 16AA, insert— " 16AA. Except with the consent of the Attorney-General, a society shall not be registered by a name that is, in the opinion of the Registrar, undesirable or is a name, or a name of a kind, that the Attorney-General has, under section twenty-two of the Companies Ordinance, directed the Registrar of Companies not to accept for registration.". Section 35— Omit from sub-section (4.) " Companies Act ", insert " Companies Ordinance ". Section 38A— Omit from sub-sections (1.), (2.) and (4.) " Companies Act ", insert " Companies Ordinance ". Omit from sub-section (5.) " Companies Act " (first occurring), insert " Companies Ordinance ". Omit from sub-section (5.) " Schedule Two to the Companies Act ", insert " the Fourth Schedule to the Companies Ordinance ".

FIRST SCHEDULE—*continued.*

First column. Ordinances amended.	Second column. Amendments.
	Section 38A—*continued.* Omit from sub-sections (8.), (10.) and (17.) " Companies Act " (wherever occurring), insert " Companies Ordinance ". Section 59— Omit from sub-section (2.) " Companies Act ", insert " Companies Ordinance ". Section 60— Omit from sub-section (1.) " Companies Act ", insert " Companies Ordinance ". Omit from sub-section (1.) " Division 6 ", insert " Subdivision E of Division 4 ". Omit from sub-section (2.) " Companies Act " (first occurring), insert " Companies Ordinance ". Omit from paragraph (*b*) of sub-section (2.) " or an extraordinary resolution ". Omit from paragraph (*c*) of sub-section (2.) " the Registrar-General or ". Omit from paragraph (*e*) of sub-section (2.) " section two hundred of the Companies Act ", insert " section two hundred and eighteen of the Companies Ordinance ". Omit from paragraph (*f*) of sub-section (2.) " section two hundred and eight or two hundred and ten of that Part ", insert " section two hundred and twenty-one or two hundred and twenty-two of the Companies Ordinance ". Omit from paragraph (*g*) of sub-section (2.) " sections two hundred and sixty-nine, two hundred and seventy and two hundred and seventy-one of the Companies Act ", insert " sections two hundred and seventy, two hundred and seventy-one and two hundred and seventy-two of the Companies Ordinance ". Omit from paragraph (*g*) of sub-section (2.) " Act " (last occurring), insert " Ordinance ". Section 60A— Omit from paragraph (*c*) " Companies Act ", insert " Companies Ordinance ".
Co-operative Societies Ordinance 1962	Section 1— Omit sub-section (3.).
Trustee Companies Ordinance 1947–1961	Section 24— Omit from sub-section (1.) " *Companies Ordinance* 1954 ", insert " *Companies Ordinance* 1962 ".

PART III.

Citation of Ordinances Amended.

First column.	Second column.
Associations Incorporation Ordinance 1953–1961	*Associations Incorporation Ordinance* 1953–1962
Australian Mutual Provident Society Ordinance 1945–1954	*Australian Mutual Provident Society Ordinance* 1945–1962
Business Names Ordinance 1956–1961	*Business Names Ordinance* 1956–1962
Companies (Unclaimed Assets and Moneys) Ordinance 1950–1954	*Companies (Unclaimed Assets and Moneys) Ordinance* 1950–1962
Co-operative Societies Ordinance 1939–1958 as amended by the *Co-operative Societies Ordinance* 1962	*Co-operative Societies Ordinance* 1939–1962
Trustee Companies Ordinance 1947–1961	*Trustee Companies Ordinance* 1947–1962

SECOND SCHEDULE.

Section 7.

FEES TO BE PAID TO THE REGISTRAR.

By a Company having a Share Capital.

	£	s.	d.
1. For the registration of a company with a nominal share capital not exceeding £5,000	20	0	0
2. For the registration of a company with a nominal share capital exceeding £5,000—			
(*a*) for the first £5,000 of the nominal share capital ..	20	0	0
(*b*) for each £1,000, or part of £1,000, by which the nominal share capital exceeds £5,000 but does not exceed £100,000	1	0	0
(*c*) for each £1,000, or part of £1,000, by which the nominal share capital exceeds £100,000 but does not exceed £500,000	0	10	0
(*d*) for each £1,000, or part of £1,000, by which the nominal share capital exceeds £500,000	0	5	0
3. On lodging with the Registrar notice of increase in the share capital of a company, a fee equal to the difference between—			
(*a*) the registration fee that would be payable if the company were registering with a nominal share capital equal to its nominal share capital immediately before the increase; and			
(*b*) the registration fee that would be payable if the company were registering with a nominal share capital equal to its nominal share capital after the increase.			
And, in addition, if the company had, immediately before the first day of August, 1960, and immediately before the increase, a nominal share capital of less than £5,000—a fee of £5 for each £1,000, or part of £1,000, included in the difference between £5,000 and the amount of its share capital immediately before the increase.			

By a Company not having a Share Capital.

4. For the registration of a company—			
(*a*) where the number of members with which the company is registered does not exceed 20	5	0	0
(*b*) where the number of such members exceeds 20 but does not exceed 100	10	0	0
(*c*) where the number of such members exceeds 100 but is less than 9,100—			
For the first 100	10	0	0
For each 50 (or part of 50) by which the number of such members exceeds 100	0	10	0
(*d*) where the number of such members is not less than 9,100	100	0	0
5. For the registration of a company the number of members of which is stated in the articles of association to be unlimited ..	100	0	0
6. On lodging with the Registrar notice of increase in the number of members, a fee equal to the difference between—			
(*a*) the registration fee that would be payable if the company were registering with a number of members equal to the number of its registered members immediately before the increase; and			
(*b*) the registration fee that would be payable if the company were registering with a number of members equal to the number of its registered members after the increase.			

Other fees.

7. For an application for the consent of the Attorney-General to the use of a name by a corporation	5	0	0
8. For the consent of the Attorney-General to the use of a name by a corporation	10	0	0
	10	0	0

SECOND SCHEDULE—*continued.*

	£	s.	d.
9. On lodging an application for the approval of the Registrar to the change of name of a company, other than a change of name directed by the Registrar pursuant to sub-section (2.) of section 23, or a change of name pursuant to sub-section (2.) of section 24, of this Ordinance	10	0	0
10. For a licence of the Attorney-General to dispense with the word "Limited" in the name of a company	10	0	0
11. For the approval of the Attorney-General to alter the memorandum or articles of a company	2	0	0
12. On lodging a request for the Registrar to exercise the powers conferred by section 309 or 311 of this Ordinance	1	0	0
13. For an act done by the Registrar as representing a defunct company under section 309 of this Ordinance	1	0	0
14. For an act done by the Registrar as representing a defunct company under section 311 of this Ordinance	5	0	0
15. On lodging with the Registrar a document required to be lodged within a period prescribed by law, in addition to any other fee—			
(*a*) if lodged within one month after the expiration of the prescribed period	1	0	0
(*b*) if lodged later than one month after the expiration of the prescribed period	6	0	0
or			
if the Registrar is satisfied that just cause existed for the failure to lodge the document within one month after the expiration of the prescribed period—such lower fee as the Registrar fixes, not being less than ..	1	0	0
16. For the registration of a foreign company—			
(*a*) subject to paragraphs (*b*) and (*c*) of this item, one half of the fee that would be payable if the company were being registered under Part III. of this Ordinance;			
(*b*) subject to paragraph (*c*) of this item, where the fee prescribed in paragraph (*a*) of this item is not applicable	100	0	0
(*c*) in the case of a corporation authorized by the law of a State or Territory of the Commonwealth to take in its own name a grant of probate or letters of administration of the estate of a deceased person	50	0	0
17. On the lodging with the Registrar by a foreign company of notice of increase in share capital or, in the case of a foreign company not having a share capital, on the lodging of notice of increase in the number of its members—one-half of the fee that would be payable on the lodging of such a notice by the company if it were registered under Part III. of this Ordinance.			
18. For registering a charge under Division 7 of Part IV. of this Ordinance	4	0	0
19. For registering particulars of a series of debentures	4	0	0
20. On lodging with the Registrar particulars of each issue of debentures in a series where there is more than one issue in the series ..	2	0	0
21. On lodging with the Registrar an application for the reservation of a name	3	0	0
22. On lodging with the Registrar articles of association of a company	2	0	0
23. On lodging with the Registrar a copy of a special resolution altering the articles of association of a company	2	0	0
24. On lodging with the Registrar a copy of a special resolution altering the memorandum of association of a company with respect to its objects	2	0	0
25. On lodging with the Registrar a deed or a copy of a deed under section 78 of this Ordinance or on lodging with the Registrar a prospectus or statement in lieu of prospectus or a statement required under section 82 of this Ordinance	5	0	0

SECOND SCHEDULE—*continued.*

	£	s.	d.
26. On a subpoena served on the Registrar to produce a document in his custody	2	0	0
And, in addition, if the Registrar so requires, such other expenses as are reasonably incurred in the production of the document			
27. On lodging an application under section 44 or 374 of this Ordinance	5	0	0
28. On lodging a memorandum under section 105 of this Ordinance ..	2	0	0
29. For a certificate issued by the Registrar under this Ordinance ..	1	0	0
30. For a copy or extract made and certified by the Registrar of or from any document in his custody	1	0	0
And, in addition, for each folio of 72 words by which the copy or extract exceeds five folios of 72 words each	0	2	0
31. For the completion and certification by the Registrar of a copy of or extract from any document in his custody of which a printed or typed copy is supplied	0	10	0
And, in addition, for each folio of 72 words by which the copy or extract exceeds five folios of 72 words each	0	1	0
32. For the making and certification by the Registrar of a photographic reproduction of a document in his custody—for each page ..	0	10	0
33. For a search in the office of the Registrar as to the availability of any name proposed to be adopted by a company or proposed company—for each name searched	0	10	0
34. For a search and inspection of the documents filed with the Registrar by or in relation to a company	0	5	0
35. For a search in the office of the Registrar for which a fee is not elsewhere prescribed	0	5	0
36. On lodging with the Registrar an annual return of a company ..	2	0	0
37. On lodging, registering, depositing or filing a document with or by the Registrar for the lodging, registering, depositing or filing of which a fee is not elsewhere prescribed	1	0	0
38. For an act done by the Registrar which he is required or authorized to do under this Ordinance and for which a fee is not elsewhere prescribed	2	10	0

Fees payable with respect to corporations formed or incorporated outside the Commonwealth shall, where appropriate, be calculated after the conversion of the share capital of the corporation into Australian currency.

Section 19.
N.Z. 1955. No. 63, Second Schedule.
S.A. s. 35, 2nd Schedule.
W.A. 3rd Schedule.

THIRD SCHEDULE.

POWERS.

1. To carry on any other business which may seem to the company capable of being conveniently carried on in connexion with its business or calculated directly or indirectly to enhance the value of or render profitable any of the company's property or rights.

2. To acquire and undertake the whole or any part of the business, property and liabilities of any person or company carrying on any business which the company is authorized to carry on or possessed of property suitable for the purposes of the company.

3. To apply for, purchase or otherwise acquire any patents, patent rights, copyrights, trade marks, formulas, licences, concessions and the like conferring any exclusive or non-exclusive or limited right to use, or any secret or other information as to, any invention which may seem capable of being used for any of the purposes of the company or the acquisition of which may seem calculated directly or indirectly to benefit the company; and to use, exercise, develop or grant licences in respect of, or otherwise turn to account, the property, rights or information so acquired.

THIRD SCHEDULE—*continued.*

4. To amalgamate or enter into partnership or into any arrangement for sharing of profits, union of interest, co-operation, joint adventure, reciprocal concession or otherwise with any person or company carrying on or engaged in or about to carry on or engage in any business or transaction which the company is authorized to carry on or engage in or any business or transaction capable of being conducted so as directly or indirectly to benefit the company.

5. To take, or otherwise acquire, and hold shares, debentures or other securities of any other company.

6. To enter into any arrangements with any Government or authority, municipal, local or otherwise, that may seem conducive to the company's objects or any of them; and to obtain from any such Government or authority any rights, privileges or concessions which the company may think it desirable to obtain; and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions.

7. To establish and support, or aid in the establishment and support of, associations, institutions, funds, trusts and conveniences calculated to benefit employees or directors or past employees or directors of the company or of its predecessors in business, or the dependants or connexions of any such persons; and to grant pensions and allowances; and to make payments towards insurance; and to subscribe or guarantee money for charitable or benevolent objects, or for any exhibition, or for any public, general or useful object.

8. To promote any other company or companies for the purpose of acquiring or taking over all or any of the property, rights and liabilities of the company, or for any other purpose which may seem directly or indirectly calculated to benefit the company.

9. To purchase, take on lease or in exchange, hire or otherwise acquire any real or personal property or any rights or privileges which the company may think necessary or convenient for the purposes of its business, and, in particular, any land, buildings, easements, machinery, plant or stock in trade.

10. To construct, improve, maintain, develop, work, manage, carry out or control any buildings, works, factories, mills, roads, ways, tramways, railways, branches or sidings, bridges, reservoirs, watercourses, wharves, warehouses, electric works, shops, stores or other works and conveniences which may seem calculated directly or indirectly to advance the company's interests; and to contribute to, subsidize or otherwise assist or take part in the construction, improvement, maintenance, development, working, management, carrying out, or control thereof.

11. To invest and deal with the money of the company not immediately required in such manner as may from time to time be thought fit.

12. To lend or advance money or give credit to any person or company; to guarantee or give guarantees or indemnities for the payment of money or the performance of contracts or obligations by any person or company; to secure in any way the repayment of moneys lent or advanced to or the liabilities incurred by any person or company, and otherwise to assist any person or company.

13. To borrow or raise or secure the payment of money in such manner as the company may think fit and to secure the same or the repayment or performance of any debt, liability, contract, guarantee or other engagement incurred or to be entered into by the company in any way and, in particular, by the issue of debentures, perpetual or otherwise, charged upon all or any of the company's property (both present and future), including its uncalled capital; and to purchase, redeem or pay off any such securities.

14. To remunerate any person or company for services rendered, or to be rendered, in placing or assisting to place or guaranteeing the placing of any of the shares in the company's capital or any debentures or other securities of the company, or in or about the organization, formation or promotion of the company or the conduct of its business.

THIRD SCHEDULE—*continued.*

15. To draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments.

16. To sell or dispose of the undertaking of the company or any part thereof for such consideration as the company may think fit and, in particular, for shares, debentures or securities of any other company having objects altogether or in part similar to those of the company.

17. To adopt such means of making known and advertising the business and products of the company as may seem expedient.

18. To apply for, secure, acquire by grant, legislative enactment, assignment, transfer, purchase or otherwise, and to exercise, carry out and enjoy any charter, licence, power, authority, franchise, concession, right or privilege which any Government or authority or any corporation or other public body may be empowered to grant; and to pay for, aid in and contribute towards carrying the same into effect; and to appropriate any of the company's shares, debentures or other securities and assets to defray the necessary costs, charges and expenses thereof.

19. To apply for, promote and obtain any statute, order, regulation or other authorization or enactment which may seem calculated directly or indirectly to benefit the company; and to oppose any bills, proceedings or applications which may seem calculated directly or indirectly to prejudice the company's interests.

20. To procure the company to be registered or recognized in any country or place outside the Territory.

21. To sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the company.

22. To issue and allot fully or partly paid shares in the capital of the company in payment or part payment of any real or personal property purchased or otherwise acquired by the company or any services rendered to the company.

23. To distribute any of the property of the company among the members in kind or otherwise, but so that no distribution amounting to a reduction of capital shall be made without the sanction required by law.

24. To take or hold mortgages, liens and charges to secure payment of the purchase price, or any unpaid balance of the purchase price, of any part of the company's property of whatsoever kind sold by the company, or any money due to the company from purchasers and others.

25. To carry out all or any of the objects of the company and do all or any of the above things in any part of the world and either as principal, agent, contractor, or trustee or otherwise, and by or through trustees or agents or otherwise, and either alone or in conjunction with others.

26. To do all such other things as are incidental or conducive to the attainment of the objects and the exercise of the powers of the company.

Sections 5, 30.

FOURTH SCHEDULE.

TABLE A.

S.A. 1st Schedule.

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES.

Interpretation.

1.—(1.) In these regulations—

"secretary" means any person appointed to perform the duties of a secretary of the company;

"the Ordinance" means the *Companies Ordinance* 1962;

"the seal" means the common seal of the company;

FOURTH SCHEDULE—*continued.*

Table A—continued.

"the Territory" means the Australian Capital Territory, and includes the Territory accepted by the Commonwealth in pursuance of the *Jervis Bay Territory Acceptance Act* 1915.

(2.) In these regulations, expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form.

(3.) Words or expressions contained in these regulations shall be interpreted in accordance with the provisions of the *Interpretation Ordinance* 1937-1959 and of the Ordinance as in force at the date at which these regulations become binding on the company.

Share Capital and Variation of Rights.

2. Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares but subject to the Ordinance, shares in the company may be issued by the directors and any such share may be issued with such preferred, deferred or other special rights or such restrictions, whether in regard to dividend, voting, return of capital or otherwise, as the directors, subject to any ordinary resolution of the company, determine.

3. Subject to the Ordinance, any preference shares may, with the sanction of an ordinary resolution, be issued on the terms that they are, or at the option of the company are, liable to be redeemed.

4. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the company is being wound up, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall apply, with the necessary modifications, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll.

5. The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking equally therewith.

6. The company may exercise the powers of paying commissions conferred by the Ordinance, except that the rate per centum or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by the Ordinance and the commission shall not exceed the rate of 10 per centum of the price at which the shares in respect whereof the same is paid are issued or an amount equal to 10 per centum of that price (as the case may be). Such commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares, or partly in one way and partly in the other. The company may also on any issue of shares pay such brokerage as may be lawful.

7. Except as required by law, no person shall be recognized by the company as holding any share upon any trust, and the company shall not be bound by or be compelled in any way to recognize (even when having notice thereof), any equitable, contingent, future or partial interest in any share or unit of a share or (except only as by these regulations or by law otherwise provided) any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.

8. A person whose name is entered as a member in the register of members shall be entitled without payment to receive a certificate under the seal of the company in accordance with the Ordinance but, in respect of a share or shares

FOURTH SCHEDULE—*continued.*

Table A—continued.

held jointly by several persons, the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all such holders.

Lien.

9. The company shall have a first and paramount lien on every share (not being a fully paid share) for all money (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a first and paramount lien on all shares (other than fully paid shares) registered in the name of a single person for all money presently payable by him or his estate to the company, but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this regulation. The company's lien, if any, on a share shall extend to all dividends payable thereon.

10. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless a sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share or the person entitled thereto by reason of his death or bankruptcy.

11. To give effect to any such sale the directors may authorize some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer, and he shall not be bound to see to the application of the purchase money and his title to the shares shall not be affected by any irregularity or invalidity in the proceedings in reference to the sale.

12. The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue, if any, shall (subject to a like lien for sums not presently payable as existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.

Calls on Shares.

13. The directors may from time to time make calls upon the members in respect of any money unpaid on their shares (whether on account of the nominal value of the shares or by way of premium) and not by the conditions of allotment thereof made payable at fixed times, except that no call shall exceed one-fourth of the nominal value of the share or be payable at less than one month from the date fixed for the payment of the last preceding call, and each member shall (subject to receiving at least fourteen days' notice specifying the time or times and place of payment) pay to the company at the time or times and place so specified the amount called on his shares. A call may be revoked or postponed as the directors may determine.

14. A call shall be deemed to have been made at the time when the resolution of the directors authorizing the call was passed, and may be required to be paid by instalments.

15. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

16. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment thereof to the time of actual payment at such rate not exceeding 8 per centum per annum as the directors may determine, but the directors shall be at liberty to waive payment of that interest wholly or in part.

FOURTH SCHEDULE—*continued.*

Table A—continued.

17. Any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date, whether on account of the nominal value of the share or by way of premium, shall for the purposes of these regulations be deemed to be a call duly made and payable on the date on which by the terms of issue the same becomes payable, and in case of non-payment, all the relevant provisions of these regulations as to payment of interest and expenses, forfeiture or otherwise shall apply as if the sum had become payable by virtue of a call duly made and notified.

18. The directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

19. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the money uncalled and unpaid upon any shares held by him, and upon all or any part of the money so advanced may (until the same would, but for the advance, become payable) pay interest at such rate, not exceeding (unless the company in general meeting otherwise directs) 8 per centum per annum, as may be agreed upon between the directors and the member paying the sum in advance.

Transfer of Shares.

20. Subject to these regulations, a member may transfer all or any of his shares by instrument in writing in any usual or common form or in any other form which the directors may approve. The instrument shall be executed by or on behalf of both the transferor and the transferee, and the transferor shall remain the holder of the shares transferred until the transfer is registered and the name of the transferee is entered in the register of members in respect thereof.

21. The instrument of transfer must be left for registration at the registered office of the company together with such fee, not exceeding 2s. 6d., as the directors from time to time may require accompanied by the certificate of the shares to which it relates and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer, and thereupon the company shall, subject to the powers vested in the directors by these regulations, register the transferee as a shareholder and retain the instrument of transfer.

22. The directors may decline to register a transfer of shares, not being fully paid shares, to a person of whom they do not approve and may also decline to register any transfer of shares on which the company has a lien.

23. The registration of transfers may be suspended at such times and for such periods as the directors may from time to time determine, not exceeding in the whole thirty days in any year.

Transmission of Shares.

24. In the case of the death of a member, the survivor or survivors where the deceased was a joint holder, and the legal personal representatives of the deceased where he was a sole holder, shall be the only persons recognized by the company as having any title to his interest in the shares, but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.

25. Subject to the *Bankruptcy Act* 1924-1960, a person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such evidence being produced as may from time to time properly be required by the directors and subject as hereinafter provided, elect either to be registered himself as holder of the share or to have some other person nominated by him registered as the transferee thereof, but the directors shall have, in the case of the nomination of another person, the same right to decline or suspend registration as they would have had in the case of a transfer of the share by that member before his death or bankruptcy.

26. If the person so becoming entitled elects to be registered himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects. If he elects to have another person registered, he shall testify his election by executing to that person a transfer of the share. All the limitations, restrictions and provisions of these regulations relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as if the

FOURTH SCHEDULE—*continued.*

Table A—continued.

death or bankruptcy of the member had not occurred and the notice or transfer were a transfer signed by that member.

27. Where the registered holder of a share dies or becomes bankrupt, his personal representative or the trustee of his estate, as the case may be, shall, upon the production of such evidence as may from time to time be properly required by the directors in that behalf, be entitled to the same dividends and other advantages, and to the same rights (whether in relation to meetings of the company, or to voting or otherwise), as the registered holder would have been entitled to if he had not died or become bankrupt, and, where two or more persons are jointly entitled to any share in consequence of the death of the registered holder, they shall, for the purposes of these regulations, be deemed to be joint holders of the share.

Forfeiture of Shares.

28. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

29. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of service of the notice) on or before which the payment required by the notice is to be made and shall state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

30. If the requirements of any such notice are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect. Such forfeiture shall include all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.

31. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and, at any time before a sale or disposition, the forfeiture may be cancelled on such terms as the directors think fit.

32. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall remain liable to pay to the company all money which, at the date of forfeiture, was payable by him to the company in respect of the shares (together with interest at the rate of 8 per centum per annum from the date of forfeiture on the money for the time being unpaid if the directors think fit to enforce payment of such interest), but his liability shall cease if and when the company receives payment in full of all such money in respect of the shares.

33. A statutory declaration in writing that the declarant is a director or the secretary of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share.

34. The company may receive the consideration, if any, given for a forfeited share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of, and he shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

35. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

Conversion of Shares into Stock.

36. The company may by ordinary resolution passed at a general meeting convert any paid up shares into stock and reconvert any stock into paid up shares of any denomination.

FOURTH SCHEDULE—*continued.*

Table A—continued.

37. The holders of stock may transfer the same or any part thereof in the same manner and subject to the same regulations as and subject to which the shares from which the stock arose might previously to conversion have been transferred or as near thereto as circumstances admit, but the directors may from time to time fix the minimum amount of stock transferable and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

38. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company and in the assets on winding up) shall be conferred by any such aliquot part of stock which would not if existing in shares have conferred that privilege or advantage.

39. Such of the regulations of the company as are applicable to paid-up shares shall apply to stock, and references to "share" and "shareholder" therein shall be read as including references to "stock" and "stockholder", respectively.

Alteration of Capital.

40. The company may from time to time by ordinary resolution—

(*a*) increase the share capital by such sum to be divided into shares of such amount as the resolution prescribes;

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

(*c*) subdivide its shares or any of them into shares of smaller amount than is fixed by the memorandum, so however that in the subdivision the proportion between the amount paid and the amount (if any) unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived; or

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

41. Subject to any direction to the contrary that may be given by the company in general meeting, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered and limiting a time within which the offer, if not accepted, will be deemed to be declined, and, after the expiration of that time or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of those shares in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this regulation.

42. The company may by special resolution reduce its share capital, any capital redemption reserve fund or any share premium account in any manner and with, and subject to, any incident authorized and consent required by law.

General Meetings.

43. An annual general meeting of the company shall be held in accordance with the provisions of the Ordinance. All general meetings, other than annual general meetings, shall be called extraordinary general meetings.

44. Any director may whenever he thinks fit convene an extraordinary general meeting, and extraordinary general meetings shall be convened on such requisition or, in default, may be convened by such requisitionists as provided by the Ordinance.

FOURTH SCHEDULE—*continued.*

Table A—continued.

45. Subject to the provisions of the Ordinance relating to special resolutions and agreements for shorter notice, seven days notice at least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of meeting and, in case of special business, the general nature of that business shall be given to such persons as are entitled to receive such notices from the company.

46. All business shall be special that is transacted at an extraordinary general meeting and also all that is transacted at an annual general meeting, with the exception of declaring a dividend, the consideration of the accounts, balance-sheets and the report of the directors and auditors, the election of directors in the place of those retiring and the appointment and fixing of the remuneration of the auditors.

Proceedings at General Meetings.

47. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business. Subject to these regulations, three members [*in the case of a public company*] two members [*in the case of proprietary company*] present in person shall constitute a quorum. For the purposes of this regulation, "member" includes a person attending as a proxy or as representing a corporation which is a member.

48. If, within half an hour from the time appointed for the meeting, a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved and, in any other case, it shall stand adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present (being not less than two) shall constitute a quorum.

49. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he is not present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act, the members present shall elect one of their number to be chairman of the meeting.

50. The chairman may, with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting, but, except for notice in that case, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

51.—(1.) At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded—

(*a*) by the chairman;

(*b*) by at least three members present in person or by proxy;

(*c*) by any member or members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or

(*d*) by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

(2.) Unless a poll is so demanded, a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(3.) The demand for a poll may be withdrawn.

FOURTH SCHEDULE—*continued.*

Table A—continued.

52. If a poll is duly demanded, it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairman directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded, but a poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith.

53. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a second or casting vote.

54. Subject to any rights or restrictions for the time being attached to any class or classes of shares, at meetings of members or classes of members each member entitled to vote may vote in person or by proxy or by attorney and, on a show of hands, every person present who is a member or a representative of a member shall have one vote and, on a poll, every member present in person or by proxy or by attorney or other duly authorized representative shall have one vote for each share he holds.

55. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders and, for this purpose, seniority shall be determined by the order in which the names stand in the register of members.

56. A member who is of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mental health may vote, whether on a show of hands or on a poll, by his committee or trustee or by such other person as properly has the management of his estate, and any such committee, trustee or other person may vote by proxy or attorney.

57. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

58. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

59. The instrument appointing a proxy shall be in writing (in the common or usual form) under the hand of the appointor or of his attorney duly authorized in writing or, if the appointor is a corporation, either under seal or under the hand of an officer or attorney duly authorized. A proxy may, but need not, be a member of the company. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

60. Where it is desired to afford members an opportunity of voting for or against a resolution, the instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit:—

Limited.

I/We, , of , being a member/members of the above-named company, hereby appoint of , or failing him, of , as my/our proxy to vote for me/us on my/our behalf at the [annual or extraordinary, *as the case may be*] general meeting of the company, to be held on the day of , 19 , and at any adjournment thereof.

Signed this day of , 19 .

This form is to be used *in favour of / against the resolution.

* *Strike out whichever is not desired.* [Unless otherwise instructed, the proxy may vote as he thinks fit.]

FOURTH SCHEDULE—*continued.*

Table A—continued.

61. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company, or at such other place within the Territory as is specified for that purpose in the notice convening the meeting, not less than forty-eight hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than twenty-four hours before the time appointed for the taking of the poll, and, in default, the instrument of proxy shall not be treated as valid.

62. A vote given in accordance with the terms of an instrument of proxy or attorney shall be valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument or of the authority under which the instrument was executed, or the transfer of the share in respect of which the instrument is given, if no intimation in writing of such death, unsoundness of mind, revocation or transfer has been received by the company at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used.

Directors: Appointments, &c.

63. The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum of association or a majority of them.

64. At the first annual general meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office. A retiring director shall be eligible for re-election.

65. The directors to retire in every year shall be those who have been longest in office since their last election, but, as between persons who became directors on the same day, those to retire shall (unless they otherwise agree among themselves) be determined by lot.

66. The company at the meeting at which a director so retires may fill the vacated office by electing a person thereto, and, in default, the retiring director shall, if offering himself for re-election and not being disqualified under the Ordinance from holding office as a director, be deemed to have been re-elected unless at that meeting it is expressly resolved not to fill the vacated office or unless a resolution for the re-election of that director is put to the meeting and lost.

67. The company may from time to time by ordinary resolution passed at a general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

68. The directors shall have power at any time, and from time to time, to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in accordance with these regulations. Any director so appointed shall hold office only until the next following annual general meeting and shall then be eligible for re-election but shall not be taken into account in determining the directors who are to retire by rotation at that meeting.

69. The company may by ordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead. The person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

70. The remuneration of the directors shall from time to time be determined by the company in general meeting. That remuneration shall be deemed to accrue from day to day. The directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meetings of the company or in connexion with the business of the company.

71. The shareholding qualification for directors may be fixed by the company in general meeting and, unless and until so fixed, shall be one share.

FOURTH SCHEDULE—*continued.*

Table A—continued.

72. The office of director shall become vacant if the director—

(*a*) ceases to be a director by virtue of the Ordinance;

(*b*) becomes bankrupt or makes any arrangement or composition with his creditors generally;

(*c*) becomes prohibited from being a director by reason of any order made under the Ordinance;

(*d*) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;

(*e*) resigns his office by notice in writing to the company;

(*f*) for more than six months is absent without permission of the directors from meetings of the directors held during that period;

(*g*) without the consent of the company in general meeting holds any other office of profit under the company except that of managing director or manager; or

(*h*) is directly or indirectly interested in any contract or proposed contract with the company and fails to declare the nature of his interest in manner required by the Ordinance.

Powers and Duties of Directors.

73. The business of the company shall be managed by the directors, who may pay all expenses incurred in promoting and registering the company, and may exercise all such powers of the company as are not, by the Ordinance or by these regulations, required to be exercised by the company in general meeting, subject, nevertheless, to any of these regulations, to the provisions of the Ordinance and to such regulations, being not inconsistent with these regulations or the Ordinance, as may be prescribed by the company in general meeting, but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

74. The directors may exercise all the powers of the company to borrow money and to mortgage or charge its undertaking, property and uncalled capital, or any part thereof, and to issue debentures and other securities, whether outright or as security for any debt, liability or obligation of the company or of any third party.

75. The directors may exercise all the powers of the company in relation to any official seal for use outside the Territory and in relation to branch registers.

76. The directors may from time to time by power of attorney appoint any corporation, firm, person or body of persons, whether nominated directly or indirectly by the directors, to be the attorney or attorneys of the company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under these regulations) and for such period and subject to such conditions as they may think fit, and any such power of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the directors may think fit and may also authorize any such attorney to delegate all or any of the powers, authorities and discretions vested in him.

77. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the company, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any two directors or in such other manner as the directors from time to time determine.

78.—(1.) The directors shall cause minutes to be made—

(*a*) of all appointments of officers;

(*b*) of the names of directors present at all meetings of the company and of the directors; and

(*c*) of all proceedings at all meetings of the company and of the directors.

(2.) Such minutes shall be signed by the chairman of the meeting at which the proceedings were held or by the chairman of the next succeeding meeting.

FOURTH SCHEDULE—*continued.*

Table A—continued.

Proceedings of Directors.

79. The directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit. A director may at any time and the secretary shall, on the requisition of a director, summon a meeting of the directors.

80. Subject to these regulations, questions arising at any meeting of directors shall be decided by a majority of votes and a determination by a majority of directors shall for all purposes be deemed a determination of the directors. In case of an equality of votes, the chairman of the meeting shall have a second or casting vote.

81. A director shall not vote in respect of any contract or proposed contract with the company in which he is interested, or any matter arising thereout, and if he does so vote, his vote shall not be counted.

82. Any director with the approval of the directors may appoint any person (whether a member of the company or not) to be an alternate or substitute director in his place during such period as he thinks fit. Any person while he so holds office as an alternate or substitute director shall be entitled to notice of meetings of the directors and to attend and vote thereat accordingly, and to exercise all the powers of the appointor in his place. An alternate or substitute director shall not be required to have any share qualification, and shall automatically vacate office if the appointor vacates office as a director or removes the appointee from office. Any appointment or removal under this regulation shall be effected by notice in writing under the hand of the director making the same.

83. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be two.

84. The continuing directors may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors or director may act for the purpose of increasing the number of directors to that number or of summoning a general meeting of the company, but for no other purpose.

85. The directors may elect a chairman of their meetings and determine the period for which he is to hold office but, if no such chairman is elected or if at any meeting, the chairman is not present within ten minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be chairman of the meeting.

86. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit and any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the directors.

87. A committee may elect a chairman of its meetings but, if no such chairman is elected or if at any meeting the chairman is not present within ten minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chairman of the meeting.

88. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present and, in the case of an equality of votes, the chairman shall have a second or casting vote.

89. All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a director or of such a person or that he was disqualified, be as valid as if he had been duly appointed and was qualified to be a director.

90. A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more directors.

FOURTH SCHEDULE—*continued.*

Table A—continued.

Managing Directors.

91. The directors may from time to time appoint one or more of their number to the office of managing director for such period and on such terms as they think fit and, subject to the terms of any agreement entered into in any particular case, may revoke any such appointment. A director so appointed shall not, while holding that office, be subject to retirement by rotation or be taken into account in in determining the rotation of retirement of directors, but his appointment shall automatically determine if he ceases from any cause to be a director.

92. A managing director shall, subject to the terms of any agreement entered into in any particular case, receive such remuneration (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the directors determine.

93. The directors may entrust to and confer upon a managing director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit, and either collaterally with or to the exclusion of their own powers, and may from time to time revoke, withdraw, alter or vary all or any of those powers.

Associate Directors.

94. The directors may from time to time appoint any person to be an associate director and may from time to time cancel any such appointment. The directors may fix, determine and vary the powers, duties and remuneration of any person so appointed, but a person so appointed shall not be required to hold any shares to qualify him for appointment and shall not have any right to attend or vote at any meeting of directors except by the invitation and with the consent of the directors.

Secretary.

95. The secretary shall, in accordance with the Ordinance, be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit, and any secretary so appointed may be removed by them.

Seal.

96. The directors shall provide for the safe custody of the seal, which shall be used only by the authority of the directors or of a committee of the directors authorized by the directors in that behalf, and every instrument to which the seal is affixed shall be signed by a director and shall be countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose.

Accounts.

97. The directors shall cause proper accounting and other records to be kept and shall distribute copies of balance-sheets as required by the Ordinance and shall from time to time determine whether and to what extent, and at what times and places and under what conditions or regulations, the accounting and other records of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have the right of inspecting any account or book or paper of the company except as conferred by law or authorized by the directors or by the company in general meeting.

Dividends and Reserves.

98. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

99. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

100. No dividend shall be paid otherwise than out of profits or shall bear interest against the company.

101. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as reserves which shall, at the discretion of the directors, be applicable for any purpose to which the profits of the company may be properly applied, and pending any such application may, at the like discretion, either be employed in the business of the company or be invested

FOURTH SCHEDULE—*continued.*

Table A—continued.

in such investments (other than shares in the company) as the directors may from time to time think fit. The directors may also, without placing the same to reserve, carry forward any profits which they may think prudent not to divide.

102. Subject to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but no amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this regulation as paid on the share. All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the divdend is paid, but, if any share is issued on terms providing that it shall rank for dividend as from a particular date, that share shall rank for dividend accordingly.

103. The directors may deduct from any dividend payable to any member all sums of money, if any, presently payable by him to the company on account of calls or otherwise in relation to the shares of the company.

104. Any general meeting declaring a dividend or bonus may direct payment of such dividend or bonus wholly or partly by the distribution of specific assets and, in particular, of paid-up shares, debentures or debenture stock of any other company or in any one or more of such ways and the directors shall give effect to such resolution, and where any difficulty arises in regard to such distribution, the directors may settle the same as they think expedient and fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any members upon the footing of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as may seem expedient to the directors.

105. Any dividend, interest or other money payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the register of members or to such person and to such address as the holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any dividends, bonuses or other money payable in respect of the shares held by them as joint holders.

Capitalization of Profits.

106. The company in general meeting may, upon the recommendation of the directors, resolve that it is desirable to capitalize any part of the amount for the time being standing to the credit of any of the company's reserve accounts or to the credit of the profit and loss account or otherwise available for distribution, and accordingly that such sum be set free for distribution amongst the members who would have been entitled thereto if distributed by way of dividend and in the same proportions on condition that the same be not paid in cash but be applied either in or towards paying up any amounts for the time being unpaid on any shares held by such members respectively or paying up in full unissued shares or debentures of the company to be allotted and distributed credited as fully paid up to and amongst such members in the proportion aforesaid, or partly in the one way and partly in the other, and the directors shall give effect to such resolution. A share premium account and a capital redemption reserve fund may, for the purposes of this regulation, be applied only in the paying up of unissued shares to be issued to members of the company as fully paid bonus shares.

107. Whenever such a resolution is passed, the directors shall make all appropriations and applications of the undivided profits resolved to be capitalized thereby, and all allotments and issues of fully paid shares or debentures, if any, and generally shall do all acts and things required to give effect thereto, with full power to the directors to make such provision by the issue of fractional certificates or by payment in cash or otherwise as they think fit for the case of shares or debentures becoming distributable in fractions, and also to authorize any person to enter on behalf of all the members entitled thereto into an agreement with the company providing for the allotment to them respectively, credited as fully paid up, of any further shares or debentures to which they may be entitled upon such

FOURTH SCHEDULE—*continued.*

Table A—continued.

capitalization, or (as the case may require) for the payment up by the company on their behalf, by the application thereto of their respective proportions of the profits resolved to be capitalized, of the amounts or any part of the amounts remaining unpaid on their existing shares, and any agreement made under such authority shall be effective and binding on all such members.

Notices.

108. A notice may be given by the company to any member either personally or by sending it by post to him at his registered address, or (if he has no registered address within the Territory) to the address, if any, within the Territory supplied by him to the company for the giving of notices to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting on the day after the date of its posting, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

109. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the register of members in respect of the share.

110. A notice may be given by the company to a person entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to him by name, or by the title of representative of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, within the Territory supplied for the purpose by the person claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

111.—(1.) Notice of every general meeting shall be given in any manner hereinbefore authorized to—

(*a*) every member except those members who (having no registered address within the Territory) have not supplied to the company an address within the Territory for the giving of notices to them;

(*b*) every person entitled to a share in consequence of the death or bankruptcy of a member who, but for his death or bankruptcy, would be entitled to receive notice of the meeting; and

(*c*) the auditor for the time being of the company.

(2.) No other person shall be entitled to receive notices of general meetings.

Winding Up.

112. If the company is wound up, the liquidator may, with the sanction of a special resolution of the company, divide amongst the members in kind the whole or any part of the assets of the company (whether they consist of property of the same kind or not) and may for that purpose set such value as he deems fair upon any property to be so divided and may determine how the division shall be carried out as between the members or different classes of members. The liquidator may, with the like sanction, vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the contributories as the liquidator, with the like sanction, thinks fit, but so that no member shall be compelled to accept any shares or other securities whereon there is any liability.

Indemnity.

113. Every director, managing director, agent, auditor, secretary and other officer for the time being of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connexion with any application under the Ordinance in which relief is granted to him by the Court in respect of any negligence, default, breach of duty or breach of trust.

FOURTH SCHEDULE—*continued.*

TABLE B.

REGULATIONS FOR MANAGEMENT OF A NO LIABILITY COMPANY.

Interpretation.

1.—(1.) In these regulations—

"secretary" means any person appointed to perform the duties of a secretary of the company;

"the Ordinance" means the *Companies Ordinance* 1962;

"the seal" means the common seal of the company;

"the Territory" means the Australian Capital Territory, and includes the Territory accepted by the Commonwealth in pursuance of the *Jervis Bay Territory Acceptance Act* 1915.

(2.) In these regulations, expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in visible form.

(3.) Words or expressions contained in these regulations shall be interpreted in accordance with the provisions of the *Interpretation Ordinance* 1937-1959 and of the Ordinance as in force at the date at which these regulations become binding on the company.

Share Capital and Variation of Rights.

2. Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares but subject to the Ordinance, shares in the company may be issued by the directors and any such share may be issued with such preferred, deferred or other special rights or such restrictions, whether in regard to dividend, voting, return of capital or otherwise, as the directors, subject to any ordinary resolution of the company, determine.

3. Subject to the Ordinance, any preference shares may, with the sanction of an ordinary resolution, be issued on the terms that they are, or at the option of the company are, liable to be redeemed.

4. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the company is being wound up, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall apply, with the necessary modifications, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll.

5. The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking equally therewith.

6. The company may exercise the powers of paying commissions conferred by the Ordinance, except that the rate per centum or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by the Ordinance and the commission shall not exceed the rate of 10 per centum of the price at which the shares in respect whereof the same is paid are issued or an amount equal to 10 per centum of that price (as the case may be). Such commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares, or partly in one way and partly in the other. The company may also on any issue of shares pay such brokerage as may be lawful.

7. Except as required by law, no person shall be recognized by the company as holding any share upon any trust, and the company shall not be bound by or be compelled in any way to recognize (even when having notice thereof), any equitable, contingent, future or partial interest in any share or unit of a

FOURTH SCHEDULE—*continued.*

Table B—continued.

share or (except only as by these regulations or by law otherwise provided) any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.

8. Every person whose name is entered as a member in the register of members shall be entitled without payment to receive a certificate under the seal of the company in accordance with the Ordinance but, in respect of a share or shares held jointly by several persons, the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all such holders.

Calls on Shares.

9. The directors may, subject to section 322 of the Ordinance, from time to time make calls upon the members in respect of any money unpaid on their shares (whether on account of the nominal value of the shares or by way of premium) and not by the conditions of allotment thereof made payable at fixed times. A call may be revoked or postponed as the directors may determine.

10. A call shall be deemed to have been made at the time when the resolution of the directors authorizing the call was passed and may be required to be paid by instalments.

11. At any sale by auction under section 323 of the Ordinance, a share forfeited for non-payment of any call may, if the directors so determine, be offered for sale and sold credited as paid up to the sum of the amount paid up thereon at the time of forfeiture and the amount of such call and the amount of any other call or calls becoming payable on or before the date of sale.

Transfer of Shares.

12. Subject to these regulations, a member may transfer all or any of his shares by instrument in writing in any usual or common form or in any other form which the directors may approve. The instrument shall be executed by or on behalf of both the transferor and the transferee, and the transferor shall remain the holder of the shares transferred until the transfer is registered and the name of the transferee is entered in the register of members in respect thereof.

13. The instrument of transfer must be left for registration at the registered office of the company together with such fee, not exceeding 2s. 6d., as the directors from time to time may require accompanied by the certificate of the shares to which it relates and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer, and thereupon the company shall, subject to the powers vested in the directors by these regulations, register the transferee as a shareholder and retain the instrument of transfer.

14. The registration of transfers may be suspended at such times and for such periods as the directors may from time to time determine, not exceeding in the whole thirty days in any year.

Transmission of Shares.

15. In case of the death of a member, the survivor or survivors where the deceased was a joint holder, and the legal personal representatives of the deceased where he was a sole holder, shall be the only persons recognized by the company as having any title to his interest in the shares.

16. Subject to the *Bankruptcy Act* 1924-1960, a person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such evidence being produced as may from time to time properly be required by the directors and subject as hereinafter provided, elect either to be registered himself as holder of the share or to have some other person nominated by him registered as the transferee thereof.

17. If the person so becoming entitled elects to be registered himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects. If he elects to have another person registered, he shall testify his election by executing to that person a transfer of the share. All the

FOURTH SCHEDULE—*continued.*

Table B—continued.

provisions of these regulations relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as if the death or bankruptcy of the member had not occurred and the notice or transfer were a transfer signed by that member.

18. Where the registered holder of a share dies or becomes bankrupt, his personal representative or the trustee of his estate, as the case may be, shall, upon the production of such evidence as may from time to time be properly required by the directors in that behalf, be entitled to the same dividends and other advantages, and to the same rights (whether in relation to meetings of the company, or to voting or otherwise), as the registered holder would have been entitled to if he had not died or become bankrupt, and, where two or more persons are jointly entitled to any share in consequence of the death of the registered holder, they shall, for the purposes of these regulations, be deemed to be joint holders of the share.

Conversion of Shares into Stock.

19. The company may by ordinary resolution passed at a general meeting convert any paid up shares into stock and re-convert any stock into paid up shares of any denomination.

20. The holders of stock may transfer the same or any part thereof in the same manner and subject to the same regulations as and subject to which the shares from which the stock arose might previously to conversion have been transferred or as near thereto as circumstances admit, but the directors may from time to time fix the minimum amount of stock transferable and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

21. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company and other matters as if they held the shares from which the stock arose, but no such privilege or advantage shall be conferred by any such aliquot part of stock which would not if existing in shares have conferred that privilege or advantage.

22. Such of the regulations of the company as are applicable to paid up shares shall apply to stock, and references to "share" and "shareholder" therein shall be read as including references to "stock" and "stockholder", respectively.

Alteration of Capital.

23. The company may from time to time by ordinary resolution—

(*a*) increase the share capital by such sum to be divided into shares of such amount as the resolution prescribes;

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

(*c*) subdivide its shares or any of them into shares of smaller amount than is fixed by the memorandum, so however that in the subdivision the proportion between the amount paid and the amount (if any) unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived; or

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

24. Subject to any direction to the contrary that may be given by the company in general meeting, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered and limiting a time within which the offer, if not accepted, will be deemed to be declined, and, after the expiration of that time or on the receipt of an intimation from the person

FOURTH SCHEDULE—*continued.*

Table B—continued.

to whom the offer is made that he declines to accept the shares offered, the directors may dispose of those shares in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this regulation.

25. The company may by special resolution reduce its share capital, any capital redemption reserve fund or any share premium account in any manner and with, and subject to, any incident authorized and consent required by law.

General Meetings.

26. An annual general meeting of the company shall be held in accordance with the provisions of the Ordinance. All general meetings, other than annual general meetings, shall be called extraordinary general meetings.

27. Any director may whenever he thinks fit convene an extraordinary general meeting, and extraordinary general meetings shall be convened on such requisition or, in default, may be convened by such requisitionists as provided by the Ordinance.

28. Subject to the provisions of the Ordinance relating to special resolutions and agreements for shorter notice, seven days notice at least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of meeting and, in case of special business, the general nature of that business shall be given to such persons as are entitled to receive such notices from the company.

29. All business shall be special that is transacted at an extraordinary general meeting and also all that is transacted at an annual general meeting, with the exception of declaring a dividend, the consideration of the accounts, balance-sheets and the report of the directors and auditors, the election of directors in the place of those retiring and the appointment and fixing of the remuneration of the auditors.

Proceedings at General Meetings.

30. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business. Subject to these regulations, three members present in person shall constitute a quorum. For the purposes of this regulation, "member" includes a person attending as a proxy or as representing a corporation which is a member.

31. If, within half an hour from the time appointed for the meeting, a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved and, in any other case, it shall stand adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present (being not less than two) shall constitute a quorum.

32. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company, or if there is no such chairman, or if he is not present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act, the members present shall elect one of their number to be chairman of the meeting.

33. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting but, except for notice in that case, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

FOURTH SCHEDULE—*continued.*

Table B—continued.

34.—(1.) At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded—

(*a*) by the chairman;

(*b*) by at least three members present in person or by proxy;

(*c*) by any member or members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or

(*d*) by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

(2.) Unless a poll is so demanded, a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(3.) The demand for a poll may be withdrawn.

35. If a poll is duly demanded, it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairman directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded, but a poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith.

36. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a second or casting vote.

37. Subject to any rights or restrictions for the time being attached to any class or classes of shares, at meetings of members or classes of members each member entitled to vote may vote in person or by proxy or by attorney and, on a show of hands, every person present who is a member or a representative of a member shall have one vote and, on a poll, every member present in person or by proxy or by attorney or other duly authorized representative shall have one vote for each share he holds.

38. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders and, for this purpose, seniority shall be determined by the order in which the names stand in the register of members.

39. A member who is of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mental health may vote, whether on a show of hands or on a poll, by his committee or trustee or by such other person as properly has the management of his estate, and any such committee, trustee or other person may vote by proxy or attorney.

40. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

41. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

42. The instrument appointing a proxy shall be in writing (in the common or usual form) under the hand of the appointor or of his attorney duly authorized in writing or, if the appointor is a corporation, either under seal or under the hand of an officer or attorney duly authorized. A proxy may, but need not, be a member of the company. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

FOURTH SCHEDULE—*continued.*

Table B—continued.

43. Where it is desired to afford members an opportunity of voting for or against a resolution, the instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit:—

No Liability.

I/We, , of , being a member/members of the above-named company, hereby appoint , of , or failing him, of , as my/our proxy to vote for me/us on my/our behalf at the [annual or extraordinary, *as the case may be*] general meeting of the company, to be held on the day of , 19 , and at any adjournment thereof.

Signed this day of , 19 .

This form is to be used $\frac{\text{*in favour of}}{\text{against}}$ the resolution.

* *Strike out whichever is not desired.* [*Unless otherwise instructed, the proxy may vote as he thinks fit.*]

44. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company, or at such other place within the Territory as is specified for that purpose in the notice convening the meeting, not less than forty-eight hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than twenty-four hours before the time appointed for the taking of the poll, and, in default, the instrument of proxy shall not be treated as valid.

45. A vote given in accordance with the terms of an instrument of proxy or attorney shall be valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument or of the authority under which the instrument was executed, or the transfer of the share in respect of which the instrument is given, if no intimation in writing of such death, unsoundness of mind, revocation or transfer has been received by the company at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used.

Directors: Appointment, &c.

46. The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum of association or a majority of them.

47. At the first annual general meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office. A retiring director shall be eligible for re-election.

48. The directors to retire in every year shall be those who have been longest in office since their last election, but, as between persons who became directors on the same day, those to retire shall (unless they otherwise agree among themselves) be determined by lot.

49. The company at the meeting at which a director so retires may fill the vacated office by electing a person thereto, and, in default, the retiring director shall, if offering himself for re-election and not being disqualified under the Ordinance from holding office as a director, be deemed to have been re-elected, unless at that meeting it is expressly resolved not to fill the vacated office or unless a resolution for the re-election of that director is put to the meeting and lost.

50. The company may from time to time by ordinary resolution passed at a general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

51. The directors shall have power at any time, and from time to time, to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in accordance with these regulations. Any

FOURTH SCHEDULE—*continued.*

Table B—continued.

director so appointed shall hold office only until the next following annual general meeting, and shall then be eligible for re-election but shall not be taken into account in determining the directors who are to retire by rotation at that meeting.

52. The company may by ordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead. The person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

53. The remuneration of the directors shall from time to time be determined by the company in general meeting. That remuneration shall be deemed to accrue from day to day. The directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meetings of the company or in connexion with the business of the company.

54. The shareholding qualification for directors may be fixed by the company in general meeting and, unless and until so fixed, shall be one share.

55. The office of director shall become vacant if the director—

(*a*) ceases to be a director by virtue of the Ordinance;

(*b*) becomes bankrupt or makes any arrangement or composition with his creditors generally;

(*c*) becomes prohibited from being a director by reason of any order made under the Ordinance;

(*d*) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;

(*e*) resigns his office by notice in writing to the company;

(*f*) for more than six months is absent without permission of the directors from meetings of the directors held during that period;

(*g*) without the consent of the company in general meeting holds any other office of profit under the company except that of managing director or manager; or

(*h*) is directly or indirectly interested in any contract or proposed contract with the company and fails to declare the nature of his interest in manner required by the Ordinance.

Powers and Duties of Directors.

56. The business of the company shall be managed by the directors, who may pay all expenses incurred in promoting and registering the company, and may exercise all such powers of the company as are not, by the Ordinance or by these regulations, required to be exercised by the company in general meeting, subject, nevertheless, to any of these regulations, to the provisions of the Ordinance and to such regulations, being not inconsistent with these regulations or the Ordinance, as may be prescribed by the company in general meeting, but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

57. The directors may exercise all the powers of the company to borrow money and to mortgage or charge its undertaking, property and uncalled capital, or any part thereof, and to issue debentures and other securities, whether outright or as security for any debt, liability or obligation of the company or of any third party.

58. The directors may exercise all the powers of the company in relation to any official seal for use outside the Territory and in relation to branch registers.

59. The directors may from time to time by power of attorney appoint any corporation, firm, person, or body of persons, whether nominated directly or indirectly by the directors, to be the attorney or attorneys of the company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under these regulations) and for such period and subject to such conditions as they may think fit, and any such power of attorney may contain such provisions for the protection and convenience of persons

FOURTH SCHEDULE—*continued.*

Table B—continued.

dealing with any such attorney as the directors may think fit and may also authorize any such attorney to delegate all or any of the powers, authorities and discretions vested in him.

60. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the company, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any two directors or in such other manner as the directors from time to time determine.

61.—(1.) The directors shall cause minutes to be made—

(*a*) of all appointments of officers;

(*b*) of the names of directors present at all meetings of the company and of the directors; and

(*c*) of all proceedings at all meetings of the company and of the directors

(2.) Such minutes shall be signed by the chairman of the meeting at which the proceedings were held or by the chairman of the next succeeding meeting.

Proceedings of Directors.

62. The directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit. A director may at any time and the secretary shall, on the requisition of a director, summon a meeting of the directors.

63. Subject to these regulations, questions arising at any meeting of directors shall be decided by a majority of votes and a determination by a majority of directors shall for all purposes be deemed a determination of the directors. In case of an equality of votes, the chairman of the meeting shall have a second or casting vote.

64. A director shall not vote in respect of any contract or proposed contract with the company in which he is interested, or any matter arising thereout, and if he does so vote, his vote shall not be counted.

65. Any director with the approval of the directors may appoint any person (whether a member of the company or not) to be an alternate or substitute director in his place during such period as he thinks fit. Any person while he so holds office as an alternate or substitute director shall be entitled to notice of meetings of the directors and to attend and vote thereat accordingly, and to exercise all the powers of the appointor in his place. An alternate or substitute director shall not be required to have any share qualification, and shall automatically vacate office if the appointor vacates office as a director or removes the appointee from office. Any appointment or removal under this regulation shall be effected by notice in writing under the hand of the director making the same.

66. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be two.

67. The continuing directors may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors or director may act for the purpose of increasing the number of directors to that number or of summoning a general meeting of the company, but for no other purpose.

68. The directors may elect a chairman of their meetings and determine the period for which he is to hold office but, if no such chairman is elected or if at any meeting the chairman is not present within ten minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be chairman of the meeting.

69. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit and any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the directors.

70. A committee may elect a chairman of its meetings, but, if no such chairman is elected or if at any meeting the chairman is not present within ten minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chairman of the meeting.

FOURTH SCHEDULE—*continued.*

Table B—continued.

71. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present and, in the case of an equality of votes, the chairman shall have a second or casting vote.

72. All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a director or of such a person or that he was disqualified, be as valid as if he had been duly appointed and was qualified to be a director.

73. A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more directors.

Managing Directors.

74. The directors may from time to time appoint one or more of their number to the office of managing director for such period and on such terms as they think fit and, subject to the terms of any agreement entered into in any particular case, may revoke any such appointment. A director so appointed shall not, while holding that office, be subject to retirement by rotation or be taken into account in determining the rotation of retirement of directors, but his appointment shall automatically determine if he ceases from any cause to be a director.

75. A managing director shall, subject to the terms of any agreement entered into in any particular case, receive such remuneration (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the directors determine.

76. The directors may entrust to and confer upon a managing director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit, and either collaterally with or to the exclusion of their own powers, and may from time to time revoke, withdraw, alter or vary all or any of those powers.

Associate Directors.

77. The directors may from time to time appoint any person to be an associate director and may from time to time cancel any such appointment. The directors may fix, determine and vary the powers duties and remuneration of any person so appointed, but a person so appointed shall not be required to hold any shares to qualify him for appointment and shall not have any right to attend or vote at any meeting of directors except by the invitation and with the consent of the directors.

Secretary.

78. The secretary shall, in accordance with the Ordinance, be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit, and any secretary so appointed may be removed by them.

Seal.

79. The directors shall provide for the safe custody of the seal, which shall be used only by the authority of the directors or of a committee of the directors authorized by the directors in that behalf, and every instrument to which the seal is affixed shall be signed by a director and shall be countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose.

Accounts.

80. The directors shall cause proper accounting and other records to be kept and shall distribute copies of balance-sheets as required by the Ordinance and shall from time to time determine whether and to what extent, and at what times and places and under what conditions or regulations, the accounting and other records of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have the right of inspecting any account or book or paper of the company except as conferred by law or authorized by the directors or by the company in general meeting.

FOURTH SCHEDULE—*continued.*

Table B—continued.

Dividends and Reserves.

81. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

82. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

83. No dividend shall be paid otherwise than out of profits or shall bear interest against the company.

84. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as reserves which shall, at the discretion of the directors, be applicable for any purpose to which the profits of the company may be properly applied, and pending any such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares in the company) as the directors may from time to time think fit. The directors may also, without placing the same to reserve, carry forward any profits which they may think prudent not to divide.

85. Subject to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends shall be divisible among the members in proportion to the shares held by them respectively irrespective of the amount paid up or credited as paid up thereon, but if any share is issued on terms providing that it shall rank for dividend as from a particular date, that share shall rank for dividend accordingly.

86. Any general meeting declaring a dividend or bonus may direct payment of such dividend or bonus wholly or partly by the distribution of specific assets and, in particular, of paid-up shares, debentures or debenture stock of any other company or in any one or more of such ways and the directors shall give effect to such resolution, and where any difficulty arises in regard to such distribution, the directors may settle the same as they think expedient and fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any members upon the footing of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as may seem expedient to the directors.

87. Any dividend, interest or other money payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the register of members or to such person and to such address as the holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any dividends, bonuses or other money payable in respect of the shares held by them as joint holders.

Capitalization of Profits.

88. The company in general meeting may, upon the recommendation of the directors, resolve that it is desirable to capitalize any part of the amount for the time being standing to the credit of any of the company's reserve accounts or to the credit of the profit and loss account or otherwise available for distribution, and accordingly that such sum be set free for distribution amongst the members who would have been entitled thereto if distributed by way of dividend and in the same proportions on condition that the same be not paid in cash but be applied either in or towards paying up any amounts for the time being unpaid on any shares held by such members respectively or paying up in full unissued shares or debentures of the company to be allotted and distributed credited as fully paid up to and amongst such members in the proportion aforesaid, or partly in the one way and partly in the other, and the directors shall give effect to such resolution. A share premium account and a capital redemption reserve fund may, for the purposes of this regulation, be applied only in the paying up of unissued shares to be issued to members of the company as fully paid bonus shares.

FOURTH SCHEDULE—*continued.*

Table B—continued.

89. Whenever such a resolution is passed, the directors shall make all appropriations and applications of the undivided profits resolved to be capitalized thereby, and all allotments and issues of fully-paid shares or debentures, if any, and generally shall do all acts and things required to give effect thereto, with full power to the directors to make such provision by the issue of fractional certificates or by payment in cash or otherwise as they think fit for the case of shares or debentures becoming distributable in fractions, and also to authorize any person to enter on behalf of all the members entitled thereto into an agreement with the company providing for the allotment to them respectively, credited as fully paid up, of any further shares or debentures to which they may be entitled upon such capitalization, or (as the case may require) for the payment up by the company on their behalf, by the application thereto of their respective proportions of the profits resolved to be capitalized, of the amounts or any part of the amounts remaining unpaid on their existing shares, and any agreement made under such authority shall be effective and binding on all such members.

Notices.

90. Subject to the provisions of the Ordinance, a notice may be given by the company to any member either personally or by sending it by post to him at his registered address, or (if he has no registered address within the Territory) to the address, if any, within the Territory supplied by him to the company for the giving of notices to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting on the day after the date of its posting, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

91. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the register of members in respect of the share.

92. A notice may be given by the company to a person entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to him by name, or by the title of representative of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, within the Territory supplied for the purpose by the person claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

93.—(1.) Notice of every general meeting shall be given in any manner hereinbefore authorized to—

(*a*) every member except those members who (having no registered address within the Territory) have not supplied to the company an address within the Territory for the giving of notices to them;

(*b*) every person entitled to a share in consequence of the death or bankruptcy of a member who, but for his death or bankruptcy, would be entitled to receive notice of the meeting; and

(*c*) the auditor for the time being of the company.

(2.) No other person shall be entitled to receive notices of general meetings.

Winding Up.

94. If the company is wound up, the liquidator may, with the sanction of a special resolution of the company, divide amongst the members in kind the whole or any part of the assets of the company (whether they consist of property of the same kind or not) and may for that purpose set such value as he deems fair upon any property to be so divided and may determine how the division shall be carried out as between the members or different classes of members. The liquidator may, with the like sanction, vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the contributories as the liquidator, with the like sanction, thinks fit, but so that no member shall be compelled to accept any shares or other securities whereon there is any liability.

95. Subject to the rights of persons, if any, entitled to shares with special rights in a winding up, and to the provisions of sub-section (2.) of section three hundred and thirty of the Ordinance all moneys and assets that may be legally distributable

FOURTH SCHEDULE—*continued.*

Table B—continued.

among members shall be distributed in proportion to the shares held by them respectively irrespective of the amount paid up or credited as paid up thereon, but if a company ceases to carry on business within twelve months of its incorporation, shares issued for cash shall in such distribution, to the extent of the capital contributed by subscribing shareholders, rank in priority to those issued to vendors or promotors or both for other consideration than cash.

Indemnity.

96. Every director, managing director, agent, auditor, secretary and other officer for the time being of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connexion with any application under the Ordinance in which relief is granted to him by the Court in respect of any negligence, default, breach of duty or breach of trust.

FIFTH SCHEDULE.

Section 39.

U.K. 4th Schedule. N.S.W. 8th Schedule. Vic. 5th Schedule. Qld. 4th Schedule. S.A. s. 50, Parts A, B, C. W.A. s. 47, Parts A, B, C. Tas. 5th Schedule.

PROSPECTUS.

PART I.

Matters to be Stated.

1. The number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders of those shares in the property and profits of the company.

2. 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.

3. The names, descriptions and addresses of all the directors or proposed directors.

4. Where the prospectus relates to shares, particulars as to—

(*a*) the minimum amount which, in the opinion of the directors, must be raised by the issue of those shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of—

(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 money borrowed by the company in respect of any of the foregoing matters; and

(iv) working capital; and

(*b*) the amounts to be provided in respect of those matters otherwise than out of the proceeds of the issue, and the sources out of which those amounts are to be provided.

5. Where the prospectus relates to debentures—

(*a*) particulars as to the limit (if any) existing in respect of the company's power to borrow or, if there is no such limit, a statement to that effect;

(*b*) the amount of subscriptions that are being sought; and

(*c*) a statement as to whether or not the company reserves the right to accept or retain over-subscriptions and, if the company reserves such a right, the limit on the right so reserved.

FIFTH SCHEDULE—*continued.*

Part I.—*continued.*

6. The time of the opening of the subscription lists.

7. The amount payable on application and allotment on each share or, where such amount may vary during the currency of the offer, the basis of calculation of the amount so payable and, in the case of a second or subsequent offer of shares, the number, description and amount offered for subscription on each previous allotment made within the two preceding years, the number 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:—

(*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; and

(*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.

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 otherwise than in cash, and, in the latter case, the extent to which they are so paid up, and, in either case, the consideration for which those shares or debentures have been issued or are proposed or intended to be issued.

10.—(1.) With respect to 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; and

(*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 by any subsidiary of the company or proposed so to be purchased or acquired being property 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 the contract for the purchase or acquisition whereof was entered into in the ordinary course of the company's or the subsidiary's business, the contract not being made in contemplation of the issue nor the issue in consequence of the contract.

11. The amount, if any, paid or payable as purchase money in cash, shares or debentures for any property to which the last preceding 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 (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, and the names of any directors, promoters, experts or proposed directors who are entitled to receive any such commission and the amount or rate thereof.

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.

FIFTH SCHEDULE—*continued.*

Part I.—*continued.*

15. The dates of, 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 and of every expert in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director or such an expert 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 in the case of a director either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connexion with the promotion or formation of the company or (in the case of an expert) for services rendered by him or the firm in connexion with the promotion or formation of the company.

18. Where the prospectus relates to shares issued and the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

19. In the case of a company which has been carrying on business, or of a business which has been carried on, for less than three years, the length of time during which the business of the company or the business to be acquired, as the case may be, has been carried on.

PART II.

Reports to be Set Out.

20.—(1.) A report by a registered company auditor, who shall be named in the prospectus, with respect to—

(*a*) profits and losses and assets and liabilities of the company, and of any guarantor company referred to in the prospectus, in accordance with sub-clause (2.) or (3.) of this clause, as the case requires; and

(*b*) the rates of the dividends, if any, paid by the company in respect of each class of shares 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 a date three months before the issue of the prospectus, containing a statement of that fact.

(2.) If the company or the guarantor companies have no subsidiaries, the report shall—

(*a*) so far as regards profits and losses, deal with the profits or losses of the company and of the guarantor companies referred to in the prospectus in respect of each of the five financial years immediately preceding the last date to which the accounts of the company were made up; and

(*b*) so far as regards assets and liabilities, deal with the assets and liabilities of the company and of the guarantor companies referred to in the prospectus at the last date to which the accounts of the companies were made up,

which date shall in no case be more than nine months (or, if the Attorney-General having regard to the circumstances of any particular case consents thereto in writing, twelve months) before the issue of the prospectus.

FIFTH SCHEDULE—*continued.*

Part II.—*continued.*

(3.) If the company or the guarantor companies have subsidiaries, the report shall—

(*a*) so far as regards profits and losses—

(i) deal as aforesaid separately with the company's and the guarantor companies' (other than subsidiaries') profits or losses as provided by sub-clause (2.) of this clause, and in addition deal as aforesaid either—

(A) as a whole with the combined profits or losses of their subsidiaries; or

(B) individually with the profits or losses of each subsidiary; or

(ii) deal as aforesaid as a whole with the profits or losses of the company and of the guarantor companies and with the combined profits or losses of their subsidiaries;

(*b*) so far as regards assets and liabilities, deal as aforesaid separately with the company's and the guarantor companies' (other than subsidiaries') assets and liabilities as provided by sub-clause (2.) of this clause, and in addition deal as aforesaid either—

(i) as a whole with the combined assets and liabilities of its or their subsidiaries, with or without the company's assets and liabilities; or

(ii) individually with the assets and liabilities of each subsidiary,

and shall indicate as respects the profits or losses and assets and liabilities of the subsidiaries the allowance to be made for persons other than members of the company.

21. If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are to be applied directly or indirectly in the purchase of any business, a report by a registered company auditor (who shall be named in the prospectus) with respect to—

(*a*) the profits or losses of the business in respect of each of the five financial years immediately preceding the last date to which the accounts of the business were made up; and

(*b*) the assets and liabilities of the business at the last date to which the accounts of the business were made up,

which date shall in no case be more than nine months (or, if the Attorney-General having regard to the circumstances of any particular case consents thereto in writing, twelve months) before the issue of the prospectus.

22.—(1.) If—

(*a*) the proceeds, or any part of the proceeds, of the issue of the shares or debentures are to be applied directly or indirectly in any manner resulting in the acquisition by the company of shares in any other corporation; and

(*b*) by reason of that acquisition or anything to be done in consequence thereof or in connexion therewith that corporation will become a subsidiary of the company,

a report by a registered company auditor (who shall be named in the prospectus) with respect to—

(*c*) the profits or losses of the other corporation in respect of each of the five financial years immediately preceding the last date to which the accounts of the corporation were made up; and

(*d*) the assets and liabilities of the other corporation at the last date to which the accounts of the corporation were made up,

which date shall in no case be more than nine months (or, if the Attorney-General having regard to the circumstances of the particular case consents thereto in writing, twelve months) before the issue of the prospectus.

FIFTH SCHEDULE—*continued.*

Part II.—*continued.*

(2.) The report shall—

(*a*) indicate how the profits or losses of the other corporation dealt with by 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 corporation has subsidiaries, deal with the profits or losses and the assets and liabilities of the corporation and its subsidiaries in the manner provided by sub-clause (3.) of clause 20 of this Schedule in relation to the company and its subsidiaries.

23. A report by the directors as to whether, after due inquiry by them in relation to the interval between the date to which the last accounts have been made up and a date not earlier than fourteen days before the issue of the prospectus—

(*a*) the business of the company has in their opinion been satisfactorily maintained;

(*b*) there have in their opinion arisen any circumstances adversely affecting the company's trading or the value of its assets;

(*c*) the current assets appear in the books at values which are believed to be realizable in the ordinary course of business;

(*d*) there are any contingent liabilities by reason of any guarantees given by the company or any of its subsidiaries; and

(*e*) there are, since the last annual report, any changes in published reserves or any unusual factors affecting the profit of the company and its subsidiaries.

PART III.

Provisions Applying to Parts I. and II. of this Schedule.

24. Clauses 2, 13 (so far as it relates to preliminary expenses) and 17 of this Schedule do not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

25. Every person shall for the purposes of this Schedule be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company in any case where—

(*a*) the purchase money is not fully paid at the date of the issue of the prospectus;

(*b*) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or

(*c*) the contract depends for its validity or fulfilment on the result of that issue.

26. Where any property to be acquired by the company is to be taken on lease, this Schedule has effect as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease and the expression "sub-purchaser" included a sub-lessee.

27. References in clause 8 of this Schedule to an option to subscribe for shares or debentures include an option to acquire them from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale, but do not include an option to subscribe for or acquire shares pursuant to a *bona fide* underwriting or sub-underwriting agreement.

28. For the purposes of clause 10 of this Schedule, where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors.

29. If, in the case of a company which has been carrying on business, or of a business which has been carried on, for less than 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, Part II. of this Schedule has effect as if references to four years, three years, two years or one year, as the case may be, were substituted for references to five years.

FIFTH SCHEDULE—*continued.*

Part III.—*continued.*

30. The expression "financial year" in Part II. of this Schedule means the year in respect of which the accounts of the company or of the business, as the case may be, are made up, and, where by reason of any alteration of the date on which the financial year of the company or business terminates, the accounts of the company or business have been made up for a period greater or less than a year, that greater or less period shall, for the purposes of that Part, be deemed to be a financial year.

31. Any report required by Part II. of this Schedule shall either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary or shall make those adjustments and indicate that adjustments have been made.

Section 51.

U.K. 3rd & 5th Schedules.
N.S.W. 4th & 9th Schedules.
Vic. 6th Schedule.
Qld. 5th Schedule.
S.A. 3rd & 4th Schedules.
W.A. 4th & 5th Schedules.
Tas. 6th Schedule.

SIXTH SCHEDULE.

STATEMENT IN LIEU OF PROSPECTUS.

PART I.

Statement in Lieu of Prospectus lodged for Registration by [insert name of the company].

The nominal share capital of the company	£
Divided into	Shares of £ each: £ Shares of £ each: £ Shares of £ each: £ Shares of £ each: £
Amount (if any) of above capital which consists of redeemable preference shares	
The date on or before which these shares are, or are liable, to be redeemed	
Names, descriptions and addresses of directors or proposed directors	
If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively	
Number and amount of shares and debentures issued within the two years immediately preceding the date of this statement or proposed or agreed to be issued as fully or partly paid up otherwise than in cash	1. shares of £ fully paid 2. shares upon which £ per share credited as paid 3. debentures £
The consideration for the issue or intended issue of those shares and debentures	4. Consideration:
Number, description and amount of any shares or debentures which any person has or is entitled to be given an option to subscribe for, or to acquire from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale	1. shares of £ and debentures of £
Period during which option is exercisable	2. Until
Price to be paid for shares or debentures subscribed for or acquired under option	3. £
Consideration for option or right to option ..	4. Consideration:
Persons to whom option or right to option was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures	5. Names and addresses:
Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired, by the company except where the contract for its purchase or acquisition was entered into in the ordinary course of the business intended to be carried on by the company or the amount of the purchase money is not material	

SIXTH SCHEDULE—*continued.*

Part I.—*continued.*

Amount (in cash, shares or debentures) payable to each separate vendor	
Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill	Total purchase price £ Cash .. .. £ Shares .. .. £ Debentures .. £ Goodwill .. £
Short particulars of any transaction relating to any such property which was completed within the two preceding years and in which any vendor to the company or any person who is, or was at the time thereof, a promoter, director or proposed director of the company had any interest, direct or indirect	
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares or debentures in the company; or	Amount paid: £ Amount payable: £
Rate of the commission	per centum.
Amount or rate of brokerage	
The number of shares, if any, which persons have agreed for a commission to subscribe absolutely	
Amount or estimated amount of preliminary expenses	£
By whom those expenses have been paid or are payable	
Amount paid or intended to be paid to any promoter	Name of promoter: Amount: £
Consideration for the payment	Consideration:
Any other benefit given or intended to be given to any promoter	Name of promoter:
Consideration for giving of benefit	Nature and value of benefit: Consideration:
Dates of, parties to and general nature of every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than two years before the delivery of this statement)	
Time and place at which the contracts or copies thereof or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, or, in the case of a contract wholly or partly in a foreign language, a copy of a translation thereof in English or embodying a translation in English of the parts in a foreign language, as the case may be (being a translation certified in the prescribed manner to be a correct translation), may be inspected	
Names and addresses of the auditors of the company (if any)	
Full particulars of the nature and extent of the interest of every director, and of every expert, in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director or expert 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 (in the case of a director) 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 connexion with the promotion or formation of the company or (in the case of an expert) for services rendered by him or the firm in connexion with the promotion or formation of the company	

SIXTH SCHEDULE—*continued.*

Part I.—*continued.*

And also, in the case of a statement to be lodged by a proprietary company on becoming a public company, the following items:—
Rates of the dividends (if any) paid by the company in respect of each class of shares in the company in each of the five financial years immediately preceding the date of this statement or since the incorporation of the company, whichever period is the shorter
Particulars of the cases in which no dividends have been paid in respect of any class of shares in any of those years

PART II.

Reports to be Set Out.

1. Where it is proposed to acquire a business, a report by a registered company auditor (who shall be named in the statement) with respect to—

(*a*) the profits or losses of the business in respect of each of the five financial years immediately preceding the lodging of the statement with the Registrar; and

(*b*) the assets and liabilities of the business at the last date to which the accounts of the business were made up.

2.—(1.) Where it is proposed to acquire shares in a corporation which, by reason of the acquisition or anything to be done in consequence thereof or in connexion therewith, will become a subsidiary of the company, a report by a registered company auditor (who shall be named in the statement) with respect to the profits and losses and assets and liabilities of the other corporation in accordance with sub-clause (2.) or (3.) of this clause, as the case requires, indicating how the profits or losses of the other corporation dealt with by 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.

(2.) If the other corporation has no subsidiaries, the report referred to in sub-clause (1.) of this clause shall—

(*a*) so far as regards profits and losses, deal with the profits or losses of the other corporation in respect of each of the five financial years immediately preceding the delivery of the statement to the Registrar; and

(*b*) so far as regards assets and liabilities, deal with the assets and liabilities of the other corporation at the last date to which the accounts of the corporation were made up.

(3.) If the other corporation has subsidiaries, the report referred to in sub-clause (1.) of this clause shall—

(*a*) so far as regards profits and losses, deal separately with the other corporation's profits or losses as provided by sub-clause (2.) of this clause, and in addition deal as aforesaid either—

(i) as a whole with the combined profits or losses of its subsidiaries; or

(ii) individually with the profits or losses of each subsidiary,

or, instead of dealing separately with the other corporation's profits or losses, deal as aforesaid as a whole with the profits or losses of the other corporation and with the combined profits or losses of its subsidiaries; and

SIXTH SCHEDULE—*continued.*

Part II.—*continued.*

(*b*) so far as regards assets and liabilities, deal separately with the other corporation's assets and liabilities as provided by sub-clause (2.) of this clause, and in addition deal as aforesaid either—

(i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the other corporation's assets and liabilities; or

(ii) individually with the assets and liabilities of each subsidiary,

and shall indicate as respects the profits or losses and the assets and liabilities of the subsidiaries the allowance to be made for persons other than members of the company.

NOTE.—Where a company is not required to furnish any of the reports referred to in this Part, a statement to that effect giving the reasons therefor should be furnished.

(Signatures of the persons abovenamed as directors .....
or proposed directors or of their agents.....
authorized in writing)

Date:

PART III.

Provisions Applying to Parts I. and II. of this Schedule.

3. In this Schedule, the expression "vendor" includes any person who is a vendor for the purposes of the Fifth Schedule to this Ordinance, and the expression "financial year" has the meaning assigned to it in Part III. of that Schedule.

4. If, in the case of a business which has been carried on, or of a corporation which has been carrying on business, for less than five years, the accounts of the business or corporation have only been made up in respect of four years, three years, two years or one year, Part II. of this Schedule has effect as if references to four years, three years, two years or one year, as the case may be, were substituted for references to five years.

5. Any report required by Part II. of this Schedule shall either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary or shall make those adjustments and indicate that adjustments have been made.

SEVENTH SCHEDULE.

Section 82.

STATEMENT REQUIRED PURSUANT TO DIVISION 5 OF PART IV.

N.S.W. 14th Schedule.
Vic. 7th Schedule.
Qld. 13th Schedule.
Tas. 7th Schedule.

PART I.

MATTERS REQUIRED TO BE STATED IN STATEMENT.

1. The date of the statement.

2. The date of and parties to the deed referred to in section 83 of this Ordinance.

3. The date of and parties to any deed or instrument by which any of the provisions of the approved deed relating to the interest has been amended or abrogated.

4. The name of the trustee or representative under any such deed and the address of the trustee's or representative's registered office.

5. A summary of the provisions of the deed regulating the retirement, removal and replacement of the trustee or representative.

6. The name of the management company and the address of its registered office.

7. The names, descriptions and addresses of all the directors of the management company.

8. A summary of the provisions of the deed regulating the retirement, removal and replacement of the management company.

SEVENTH SCHEDULE—*continued.*

Part I.—*continued.*

9. The name and address of the auditor of the accounts relating to interests under the deed.

10. A summary of the provisions of the deed regulating the appointment, retirement, removal and replacement of such auditor.

11. The duration, if ascertainable, of the undertaking, scheme, enterprise or investment contract to which the deed relates or, if the duration is not ascertainable, that fact.

12. Full particulars with respect to the termination or winding up of the undertaking, scheme, enterprise or investment contract.

13. Such particulars as are sufficient to disclose the true nature of the undertaking, scheme, enterprise or investment contract in respect of which the interest is to be issued or offered to the public for subscription or purchase and the property to which the interest relates.

14. The nature of the interest to be so issued or offered and of any units or sub-units into which the interest is divided and the rights in relation thereto of the persons who become the holders thereof.

15. The address where the register of interest holders is or will be kept and the days on, and the hours during, which it is or will be accessible to the public.

16. The method of calculation provided by the deed of the price at which the management company may sell the interest or any right in respect thereof or any unit or sub-unit of the interest.

17. Such particulars as are sufficient to describe the duties and obligations imposed on the trustee or representative appointed by the deed relating to the interest.

18. The name and address of each person or corporation with whom or with which a holder of the interest is required, obliged or entitled, in connexion with the undertaking, scheme, enterprise or investment contract, to enter into any contract, whether by way of lease or otherwise.

19. The full names, descriptions and residential addresses of the directors of each corporation referred to in clause 18 of this Schedule.

20. Whether any real or personal property to which the interest relates is or will become vested in the trustee or representative, the nature and description of such property and the conditions or circumstances under which it is or will become so vested.

21. Where the interest consists of rights or interests in or arising out of an investment relating to property that ordinarily depreciates in value through use or effluxion of time, such particulars as are sufficient to disclose the true particulars of the provision made for the replacement of such property and the source or sources from which such replacement is to be made or from which the cost of such replacement to be met.

22. The full names and residential addresses of the vendors of any property to which the interest relates, whether such property was purchased or acquired by the management company or by any persons or corporation referred to in clause 18 of this Schedule or is proposed to be so purchased or acquired, a full and true description of such property and the amount paid or to be paid therefor to each vendor.

23. Such particulars as are sufficient to disclose the true nature and extent of the interest, if any, of each director of the management company, whether as a director, shareholder, partner or otherwise, in the business of each such vendor and in such property.

24. The obligations imposed upon the management company or any other person to purchase from any holder thereof the interest or any rights in respect thereof or the units or sub-units of the interest for which he has subscribed or which he has purchased, and a statement of the method provided by the deed for the calculation of the purchase price thereof.

SEVENTH SCHEDULE—*continued.*

Part I.—*continued.*

25. A summary of the rights and obligations of the management company and of the trustee or representative governing the valuation of any investment made or property held in relation to the interest.

26. A summary of the provisions of the deed whereby investments or other property comprising or forming part of the interest to which the deed relates may be varied.

27. Full information regarding the remuneration of the trustee or representative and of the management company, respectively, the manner in which under the provisions of the deed such remuneration is provided for, and the charges (if any) that will be made by way of such remuneration upon the sale of or subscription for any such interest and upon the distribution of income and capital or otherwise in connexion with the relevant undertaking, scheme, enterprise or investment contract.

28. Whether the interest or any rights in respect thereof, or any units or sub-units of the interest, are transferable by the holders thereof and, if so, a summary of the provisions of the deed regulating such transfer.

29. A summary of the provisions of the deed relating to the distribution to the holders of the interest, or of units or sub-units of the interest, of the income derived from the undertaking, scheme, enterprise or investment contract.

30. Full information as to whether and to what extent any factor other than cash receipts by way of dividend, interest or bonus has been or will be taken into account in calculating the amount of income that will be payable to an interest holder.

31. If any reference is made to the yield of income obtained or likely to be obtained by the holders of the inerest or of units or sub-units of the interest, a statement as to whether and to what extent anything other than cash receipts by way of dividends, interest or bonuses has been taken into account in calculating the yield.

32. A summary of the provisions of the Ordinance and of the deed regulating the convening of meetings of holders of the interest or of units or sub-units of the interest.

33. The name and description and the date of commencement of operation of every other undertaking, scheme, enterprise or investment contract involving the issue of interests to the public conducted by the management company within the five years immediately preceding the date of the statement.

34. A declaration—

(*a*) that no units or sub-units of interests purchased or subscribed for pursuant to the statement will be allotted later than six months after the date of the statement; and

(*b*) unless the conditions of issue of the units or sub-units expressly provide that certificates be not issued, that certificates will be issued by the trustee or representative to purchasers of or subscribers for units or sub-units of interests purchased or subscribed for pursuant to the statement not more than two months after the allotment of the units or sub-units.

35. A summary of the provisions of the deed with respect to the undertakings—

(*a*) by or on behalf of the management company relating to the allotment of interests, and of units or sub-units of interests, to which the deed relates; and

(*b*) by or on behalf of the trustee or representative relating to the issue to holders of interests and of units or sub-units of interests of certificates of title thereto.

SEVENTH SCHEDULE—*continued.*

PART II.

REPORTS TO BE SET OUT IN STATEMENT.

36. A report or reports by a person who at the time of making the report or reports was a registered company auditor, and whose name must appear as such in the statement, setting out—

(*a*) such information as sufficiently discloses the number of distributions (if any) of income to holders of interests, or of units or sub-units of interests, to which the deed relates in each of the five years immediately preceding the date of the statement during which those interests had been in existence, the amount of each distribution and the extent to which each distribution consisted of any component other than dividends, interest or bonuses, and where it consisted of any component other than dividends, interest or bonuses, the nature and value of each of those components;

(*b*) such information as sufficiently discloses the selling price and the purchase price, respectively, of those interests, units or sub-units on the date upon which each distribution was made;

(*c*) such information as sufficiently discloses the selling price and purchase price, respectively, of those interests, units or sub-units on such date, being a date within a period of fourteen days immediately preceding the date of the statement, as is specified in the relevant report;

(*d*) in respect of every issue of interests relating to any other undertaking, scheme, enterprise or investment contract conducted or entered into by the management company within the period of five years immediately preceding the date of the statement, similar information to that required under paragraphs (*a*), (*b*) and (*c*) of this clause; and

(*e*) the profits or losses of the management company (and of every corporation with which a holder of the interest is required, obliged or entitled, pursuant to the undertaking, scheme, enterprise or investment contract, to enter into any contract) in respect of each of the five years during which the company and corporation, respectively, were carrying on business immediately preceding the date of the statement, and the rates of dividend (if any) paid by that company and that corporation in respect of each of those years, and the assets and liabilities of that company and of that corporation as at the last date to which its accounts were made up.

37. If, in the case of a company which has been carrying on business, or of a business which has been carried on, for less than 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, this Schedule has effect as if references to four years, three years, two years or one year, as the case may be, were substituted for references to five years.

EIGHTH SCHEDULE.

Sections 158, 160.

U.K. 6th Schedule. N.S.W. 6th Schedule. Vic. 8th Schedule. Qld. 6th Schedule. S.A. 5th Schedule. W.A. 6th Schedule. Tas. 8th Schedule.

PART I.

Contents of Annual Return of a Company Having a Share Capital.

1. The address of the registered office of the company.

2. In a case in which the register of members is kept elsewhere than at the registered office, the address of the place where it is kept.

3. A summary, distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, specifying—

(*a*) the amount of the share capital of the company and the number of the shares into which it is divided;

(*b*) the number of shares taken up from the incorporation of the company to the date of the return;

EIGHTH SCHEDULE—*continued.*

Part I.—*continued.*

(*c*) the amount called up on each share;

(*d*) the total amount of calls received, including payments on application and allotment;

(*e*) the total amount (if any) agreed to be considered as paid on shares which have been issued as fully or partly paid up otherwise than in cash;

(*f*) the total amount of calls unpaid;

(*g*) the total amount of the sums, if any, paid by way of commission in respect of any shares or debentures since the date of the last return;

(*h*) particulars of the discount allowed on the issue of any shares issued at a discount or of so much of that discount as has not been written off at the date of the return;

(*i*) the total amount of the sums, if any, allowed by way of discount in respect of any debentures since the date of the last return;

(*j*) the total number of shares forfeited; and

(*k*) the total amount (if any) paid on shares forfeited.

4. Particulars of the total amount of the indebtedness of the company in respect of all charges which are required to be registered with the Registrar.

5. Except in the case of a no liability company or a company exempted under the provision of section one hundred and sixty of this Ordinance, a list as at the date of the return or as at such date as the Registrar authorizes in the case of any company—

(*a*) containing the names (that is to say at least the surname and one Christian or other name and other initials) and addresses of all persons who on such date are members of the company;

(*b*) stating the number of shares held by each member at the date of the list; and

(*c*) if the names are not arranged in alphabetical order, having annexed thereto an index sufficient to enable the name of any person in the list to be easily found.

6. Where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the list must give particulars as to the amount of stock or the number of stock units instead of the amount of shares.

7. In the case of a company keeping a branch register—

(*a*) the list referred to in clause 5 of this Schedule is not required to contain any particulars which are contained in entries in the branch register if copies of those entries are not received at the registered office of the company before the date of the list; and

(*b*) where an annual return or a list of members is dated between the date when any entries are made in the branch register and the date when copies of those entries are received at the registered office of the company, the particulars contained in those entries, so far as relevant to an annual return, shall be included in the next or a subsequent annual return as may be appropriate having regard to the particulars included in that return with respect to the company's register of members.

8. All such particulars with respect to the persons who at the date of the return are the directors of the company and any person who at that date is a manager or secretary of the company as are by this Ordinance required to be contained in the register of directors, managers and secretaries.

9. Name and address of the auditor of the company.

EIGHTH SCHEDULE—*continued.*

Part I.—*continued.*

10. In the case of a no liability company, particulars of—

(*a*) the date when each call made since the date of the last return, or (in the case of a first return) since incorporation, was payable;

(*b*) the dates since the last return or incorporation when shares forfeited were offered for sale, and the place of offer;

(*c*) the number of shares sold at each sale of forfeited shares made since the date of the last return or (in the case of a first return) since the date of incorporation;

(*d*) the number of shares unsold at each offer for sale of forfeited shares made since the date of the last return or (in the case of a first return) since the date of incorporation; and

(*e*) the number of shares disposed of pursuant to sub-section (3.) of section three hundred and twenty-four of this Ordinance since the date of the last return, being shares withdrawn from sale or for which no bid was received.

PART II.

Form of Annual Return of a Company Having a Share Capital.

Annual return of Limited made up to the day of 19 [being the date of or a date not later than the fourteenth day after the date of the annual general meeting in 19].

The date of the annual general meeting of the company was 19 .

The address of the registered office of the company is .

The address of the place at which the register of members is kept, if other than the registered office, is .

Summary of Share Capital and Shares.

Nominal share capital £ divided into[1] .. .. { shares of £ each. / shares of £ each.

Total number of shares taken up[1] to the day of 19 (*being the date of the return or other authorized date*).

Number of shares issued subject to payment wholly in cash ..

Number of shares issued as fully paid up otherwise than in cash

Number of shares issued as partly paid up to the extent of per share otherwise than in cash

[2]Number of shares (if any) of each class issued at a discount ..

Total amount of discount on the issue of shares which has not been written off at the date of this return £ .

[3]There has been called up on each of shares, £ . .

[3]There has been called up on each of shares, £ . .

[3]There has been called up on each of shares, £ . .

[4]Total amount of calls received, including payments on application and allotment

Total amount (if any) agreed to be considered as paid on shares which have been issued as fully paid up otherwise than in cash. £ .

Total amount (if any) agreed to be considered as paid on shares which have been issued as partly paid up to the extent of per share otherwise than in cash £ .

Total amount of calls unpaid .. .. £ .

EIGHTH SCHEDULE—*continued.*

Part II.—*continued.*

Total amount of the sums (if any) paid by way of commission in respect of any shares or debentures since the date of the last return } £ .

Total amount of the sums (if any) allowed by way of discount in respect of any debentures since the date of the last return } £ .

Total number of shares forfeited .. ..

Total amount paid (if any) on shares forfeited .. .. £ .

[5]Total amount of the indebtedness of the company in respect of all charges which are required to be registered with the Registrar of Companies } £ .

[1] Where there are shares of different kinds or amounts (*e.g.*, preference and ordinary, or £10 and £5), state the numbers and nominal values separately.

[2] If the shares are of different kinds, state them separately.

[3] Where various amounts have been called or there are shares of different kinds, state them separately.

[4] Include what has been received on forfeited as well as on existing shares.

[5] State in respect of each charge the registered number thereof, the date of registration and the amount of indebtedness at the date of the return.

Copy of last audited Balance-sheet and Profit and Loss Account of the Company.

Except where the company is an exempt proprietary company on the date of the return and has been an exempt proprietary company since the date of the previous return, the incorporation of the company or the commencement of this Ordinance, whichever last occurs, or is a company registered under the *Life Insurance Act* 1945-1961, this return must include a copy, certified by a director or by the manager or secretary of the company to be a true copy, of the last balance-sheet and of the last profit and loss account which have respectively been audited by the company's auditors (including every document required by law to be annexed or attached thereto) together with a copy of the report of the auditors thereon (certified as aforesaid) and, if any such balance-sheet or account is in a foreign language, there must also be annexed to it a certified translation. If the last balance-sheet or profit and loss account did not comply with the requirements of the law as in force at the date of the audit, there must be made such additions to and corrections in the copy thereof as would have been required to be made therein in order to make it comply with the said requirements, and the fact that the copy has been so amended must be stated thereon. If a company has more than one such audited balance-sheet or profit and loss account since the date of the last return, every such balance-sheet and profit and loss account must be included.

Certificate to be Given by all Companies.

A certificate in the form set out hereunder shall be given by the secretary or a director of every company and, in the case of an exempt proprietary company, by both a director and a secretary.

Certificate.

I/We(1) after having made due inquiries certify—

(*a*) that the provisions of Part III. of the *Companies (Unclaimed Assets and Moneys) Ordinance* 1950-1962 have been complied with;

(*b*) having made an inspection of the share register, that transfers *have*(1) been registered since the date of *the last annual return*(1); *have not* *the incorporation of the company*;

(*c*)(2) that the company has not, since the date of the last annual return,(3) issued any invitation to the public to subscribe for any shares in or debentures of the company or to deposit moneys for fixed periods or payable at call;

EIGHTH SCHEDULE—*continued.*

Part II.—*continued.*

(*d*)(4) that the excess of members of the company above fifty (counting joint holders of shares as one person) consists wholly of persons who are in the employment of the company or of its subsidiary or persons who, while previously in the employment of the company or of its subsidiary, were and thereafter have continued to be members of the company;

(*e*)(5) that, to the best of our knowledge and belief, the company is an exempt proprietary company, and has been an exempt proprietary company, for the purposes of the *Companies Ordinance* 1962

since the { *date of the previous return*(6) / *incorporation of the company*(6) / *commencement of that Ordinance*(6);

(*f*)(7) that, on the day of 19 , all the members of the company agreed pursuant to section 165 of that Ordinance not to appoint an auditor for the financial year 19 .

Signature Director(8)

Signature Secretary

(1) Strike out whichever is inapplicable.

(2) Strike out except in the case of a proprietary company.

(3) In the case of the first annual return of a proprietary company, strike out the words "last annual return" and substitute therefor the words "incorporation of the company".

(4) Strike out except in the case of a proprietary company whose members exceed fifty.

(5) Strike out except in the case of an exempt proprietary company.

(6) Strike out if not appropriate.

(7) Strike out if inapplicable. Note this paragraph is only applicable to an exempt proprietary company.

(8) A certificate signed by the same person in the capacity of both director and secretary will not be accepted. *See* section 132(5.).

Particulars of the Directors, Managers, Secretaries and Auditors of Limited at the date of the Annual Return.

Present Christian or other name or names and surname.*	Any former Christian or other name or names or surname.	Usual address. Usual residential address in case of directors.	Other business occupation and, in the case of directors, particulars of other directorships required to be shown by s. 134 (2.) (*c*) and (3.) (If none, state so).
Directors†			
Manager (if any)			
Secretaries			
Auditors for current financial year			

* In the case of a corporation, its corporate name and registered or principal office should be shown.

† "Director" includes any person who occupies the position of a director by whatever name called, and any person in accordance with whose directions or instructions the directors of a company are accustomed to act.

EIGHTH SCHEDULE—*continued.*

Part II.—*continued.*

List of persons holding shares in Limited on the day of 19 (*being the date of the return or other authorized date*) and an account of the shares so held.

NOTE.—If the names in this list are not arranged in alphabetical order, an index sufficient to enable the name of any person in the list to be readily found must be annexed to this list.

NOTE.—In the case of a no liability company or a company exempted under the provisions of section one hundred and sixty of the *Companies Ordinance* 1962, this list is not required to be supplied.

Folio in Register Ledger containing particulars.	Names and addresses.	* Number of shares held by existing members†.

* The aggregate number of shares held, and not the distinctive numbers, must be stated, and the column must be added up thoughout so as to make one total to agree with that stated in the summary to have been taken up.

† When the shares are of different classes, these columns may be subdivided so that the number of each class held may be shown separately. Where any shares have been converted into stock, particulars of the amount of stock must be shown.

No Liability Companies.

Particulars as to Calls and as to Sales of Forfeited Shares.

Date when each call made since the date of the last return or, in the case of a first return, since incorporation was payable :

Date since the last return or incorporation when shares forfeited were offered for sale and the place of offer :

Number of shares sold at each sale of forfeited shares made since the date of the last return or, in the case of a first return, since the date of incorporation :

Number of shares unsold at each offer for sale of forfeited shares made since the date of the last return or, in the case of a first return, since the date of incorporation :

Number of shares disposed of pursuant to sub-section (3.) of section three hundred and twenty-four of the *Companies Ordinance* 1962, since the date of the last return, being shares withdrawn from sale or for which no bid was received :

[*Signature.*]

[*State whether director or manager or secretary.*]

Sections 162, 341.

U.K. 1948 c. 38. Eighth Schedule. Vic. 9th Schedule.

NINTH SCHEDULE.

ACCOUNTS.

Profit and Loss Account.

1. There shall be shown in respect of the period of accounting—
   (*a*) the net balance of profit and loss on the company's trading;
   (*b*) income from investments in subsidiaries of the company;
   (*c*) income from other investments distinguishing between income received from any shares and debentures which are dealt in on any prescribed Stock Exchange in the Commonwealth and income received from other sources;
   (*d*) amounts (if any) charged for depreciation or amortization on—
      (i) investments;
      (ii) goodwill; or
      (iii) fixed assets;
   (*e*) the amount of interest on the company's debentures and fixed term loans;
   (*f*) any profit or loss arising from a sale or revaluation of fixed or intangible assets if brought into account in determining the company's profit or loss;
   (*g*) the amounts, if material, set aside or proposed to be set aside to, or withdrawn from, reserves;
   (*h*) the amount, if material, set aside to provisions other than provisions for depreciation, renewals or diminution in value of assets or, as the case may be, the amount, if material, withdrawn from such provisions and not applied for the purposes thereof;
   (*i*) the amounts respectively provided for redemption of share capital and for redemption of loans;
   (*j*) provision made for payment of income tax in respect of the period of accounting;
   (*k*) the aggregate amount of the dividends paid and the aggregate amount of the dividends proposed to be paid;
   (*l*) the total of the amount paid to the directors as remuneration for their services, inclusive of all fees, percentages, bonuses and commissions or other emoluments paid to or receivable by them by or from the company or by or from any subsidiary of the company, and inclusive of commission paid or payable for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares in or debentures of the company or of its holding company or any subsidiary of the company, but the salaries and bonuses and commissions paid by way of salary of directors who are engaged in the full time employment of the company or any subsidiary of the company need not be included in this amount; and
   (*m*) the total of the amount paid to or receivable by the auditors as remuneration for their services as auditors, inclusive of all fees, percentages or other payments or consideration given, by or from the company or by or from any subsidiary of the company.

Balance-sheet.

2.—(1.) There shall be shown as at the end of the period of accounting—
   (*a*) the amount of authorized capital and particulars of issued capital distinguishing between classes of shares and specifying by way of note to the balance-sheet any portion of the share capital which has not already been called up and which is not capable of being called up except in the event and for the purposes of the company being wound up and stating the rates of dividend, and whether participating or cumulative or both, attaching to shares other than ordinary shares, and stating the amount of calls in arrear in each class;
   (*b*) the part of the issued capital that consists of redeemable preference shares, the date on or before which these shares are, or are liable, to be redeemed and the earliest date on which the company has power to redeem those shares and the amount of the premium (if any) at which those shares are redeemable;

NINTH SCHEDULE—*continued.*

(*c*) so far as the information is not given in the profit and loss account, any share capital on which interest has been paid out of capital during the financial year, and the rate at which interest has been so paid;

(*d*) the amount of the share premium account;

(*e*) particulars of any redeemed debentures which the company has power to re-issue;

(*f*) under separate headings, so far as they are not written off—

(i) the preliminary expenses;

(ii) any expenses incurred in connexion with any issue of shares or debentures;

(iii) any sums paid by way of commission in respect of any shares or debentures;

(iv) any sums allowed by way of discount in respect of any debentures;

(v) the amount of the discount allowed on any issue of shares at a discount; and

(vi) if the amount of the goodwill and of any patents and trade marks or part of that amount is shown as a separate item in or is otherwise ascertainable from the books of the company, or from any contract for the sale or purchase of any property to be acquired by the company, or from any documents in the possession of the company relating to the stamp duty payable in respect of any such contract or the conveyance of any such property—the said amount so shown or ascertained;

(*g*) the reserves, provisions, liabilities, fixed assets and current assets classified separately under headings appropriate to the company's business showing separately the provision for taxation and stating the method used to arrive at the amount of assets under each heading, but—

(i) where the amount of any class is not material, it may be included under the same heading as some other class; and

(ii) where any assets of one class are not separable from assets of another class, those assets may be included under the same heading;

(*h*) under separate headings, stating the methods used to arrive at the amount of the investments under each heading—

(i) investments in Government, municipal and other public debentures, stock or bonds;

(ii) investments in subsidiaries of the company;

(iii) investments in companies (not being subsidiaries of the company) the shares in or debentures of which are dealt in on any prescribed stock exchange in the Commonwealth or elsewhere; and

(iv) investments in any other companies;

(*i*) under separate headings—

(i) amounts owing by subsidiaries of the company;

(ii) trade debts and bills receivable (other than amounts owing by subsidiaries of the company);

(iii) the amount outstanding of any loan made, guaranteed or secured by the company, being a loan made to a director of the company or of a company which is deemed by virtue of sub-section (5.) of section six of this Ordinance to be related to the company, or a loan made to another company in which a director of the company or of a company which is is so deemed to be related to the company owns a controlling interest; and

(iv) other debts owing to the company,

and where any amounts or debts shown under such a heading include any sums which consist of or are in the nature of interest, accommodation charges, service charges, maintenance charges or insurance

NINTH SCHEDULE—*continued.*

premiums, those sums shall, except to the extent that they have become due and payable and have been demanded, be shown as a deduction from the amounts or debts shown under that heading;

(*j*) balance of profit and loss account;

(*k*) debentures, showing separately amounts that are redeemable not later than twelve months after the date to which the accounts are made up and amounts that are redeemable later than twelve months after that date;

(*l*) liabilities (other than debentures, bank loans and overdrafts) secured by any charge on the assets whether registered or not, showing separately the aggregate of the amounts that are payable not later than twelve months after the date to which the accounts are made up and the aggregate of the amounts that are payable later than twelve months after that date;

(*m*) bank loans and overdrafts;

(*n*) amounts borrowed without security, showing separately the aggregate of the amounts that are repayable not later than twelve months after the date to which the accounts are made up and the aggregate of the amounts that are repayable later than twelve months after that date;

(*o*) amounts owing to subsidiaries of the company;

(*p*) amounts owing to trade creditors (other than amounts owing to subsidiaries of the company);

(*q*) other amounts owing by the company;

(*r*) under separate headings (to be stated by way of note if not otherwise shown)—

(i) contingent liabilities unsecured;

(ii) contingent liabilities secured upon the company's assets; and

(iii) where practicable, the aggregate amount, if it is material, of contracts for capital expenditure, so far as that amount has not been provided for; and

(*s*) arrears of dividends on preference shares.

(2.) For the purposes of this clause, where more than one method is used to arrive at any amount shown in the balance-sheet, there shall be shown in the balance-sheet a separate total in respect of each of the methods so used.

(3.) In the case of a no liability company, the balance-sheet shall show, in addition to the matters required by the foregoing provisions of this clause to be shown—

(*a*) the total number of shares forfeited; and

(*b*) the number of shares forfeited in respect of each call and amount of each of those calls.

3.—(1.) The method of arriving at the amount of any investment or fixed asset shall, subject to sub-clause (2.) of this clause, be to take the difference between—

(*a*) its cost or, if it stands in the company's books at a valuation other than cost, the amount of the valuation; and

(*b*) the aggregate amount provided or written off since the date of acquisition or valuation, as the case may be, for depreciation or diminution in value.

(2.) For the purposes of this clause, the net amount at which any assets stand in the company's books at the commencement of this Ordinance (after deduction of the amounts previously provided or written off for depreciation or diminution in value) shall, if the figures relating to the period before the commencement of this Ordinance cannot be obtained without unreasonable expense or delay, be treated as if it were the amount of the valuation of those assets made at the commencement of this Ordinance, and where any of those assets are sold, the net amount less the amount of the sales shall be treated as if it were the amount of a valuation so made of the remaining assets.

NINTH SCHEDULE—*continued.*

(3.) Sub-clause (1.) of this clause does not apply—

(*a*) to assets for which the figures relating to the period beginning with the commencement of this Ordinance cannot be obtained without unreasonable expense or delay; or

(*b*) to assets the replacement of which is provided for wholly or partly—

(i) by making provision for renewals and charging the cost of replacement against the provision so made; or

(ii) by charging the cost of replacement direct to revenue; or

(*c*) to any investments of which the market value (or, in the case of investments not having a market value, their value as estimated by the directors) is shown either as the amount of the investments or by way of note; or

(*d*) to goodwill, patents or trade marks.

(4.) For the assets under each heading whose amount is arrived at in accordance with sub-clause (1.) of this clause, there shall be shown—

(*a*) the aggregate of the amounts referred to in paragraph (*a*) of that sub-clause; and

(*b*) the aggregate of the amounts referred to in paragraph (*b*) of that sub-clause.

(5.) As respects the assets under each heading whose amount is not arrived at in accordance with sub-clause (1.) of this clause because their replacement is provided for as mentioned in paragraph (*b*) of sub-clause (3.) of this clause, there shall be stated—

(*a*) the means by which their replacement is provided for; and

(*b*) the aggregate amount of the provisions (if any) made for renewals and not used.

Holding and Subsidiary Companies.

4.—(1.) There shall be annexed to the profit and loss account of every holding company—

(*a*) a separate profit and loss account for each subsidiary of the company; or

(*b*) a consolidated profit and loss account of the holding company and of its subsidiaries eliminating all inter-company transactions.

(2.) There shall be clearly stated (by way of note or otherwise), either in the profit and loss account of the holding company or in a document annexed thereto pursuant to sub-clause (1.) of this clause, the name and place of incorporation of each subsidiary to which that profit and loss account or other document relates.

(3.) There shall be annexed to the balance-sheet of every holding company—

(*a*) a balance-sheet of each subsidiary of the company; or

(*b*) a consolidated balance-sheet of the holding company and of its subsidiaries eliminating all inter-company balances.

(4.) Such profit and loss accounts and balance-sheets shall be in the same form as the profit and loss account and balance-sheet of the holding company and shall be accompanied by the auditor's report thereon.

(5.) In the case of a subsidiary company incorporated outside the Territory whether it has or has not established a place of business in the Territory, it is sufficient if the separate profit and loss account or balance-sheet (as the case requires) of such subsidiary company is in such form and is so reported upon by auditors and contains such particulars and includes such documents (if any) as the company is required to make out and lay before the company in general meeting by the law for the time being applicable to such company in the place where it is incorporated.

(6.) If the auditor's report on the balance-sheet or profit and loss account of a subsidiary company is qualified in any way, the separate balance-sheet of the subsidiary company or the consolidated balance-sheet of the holding company (as the case may be) shall contain particulars of the manner in which the report is qualified.

(7.) This clause does not apply to a subsidiary which would not be a subsidiary but for the operation of sub-paragraph (i) or (ii) of paragraph (*a*) of sub-section (1.) of section six of this Ordinance.

NINTH SCHEDULE—*continued.*

General.

5.—(1.) All amounts shown in profit and loss accounts and balance-sheets shall be quoted in Australian currency, and not otherwise.

(2.) Except in the case of the first balance-sheet or profit and loss account laid before the company after the commencement of this Ordinance there shall be shown in every balance-sheet and profit and loss account the corresponding amounts at the end of the immediately preceding financial year for all items shown in the balance-sheet or profit and loss account.

(3.) Every profit and loss account or balance-sheet shall state by way of note—

(*a*) if any conversion into Australian currency has been made for the purposes of the profit and loss account and balance-sheet, the basis of the conversion of the other currency into Australian currency; and

(*b*) the aggregate quoted market value of any investment of a kind referred to in paragraph (*h*) of sub-clause (1.) of clause 2 of this Schedule.

Section 184.

TENTH SCHEDULE.

PART A.

Requirements with which Take-over Offers to Comply.

1. The offer shall be dated and shall be dispatched to the offeree within three days of its date and shall state that, except in so far as it and all other take-over offers made under the take-over scheme may be totally withdrawn and every person released from any obligation incurred thereunder, it will remain open for acceptance by the offeree for at least one month from that date.

2. The offer shall not be conditional upon the offeree approving or consenting to any payment or other benefit being made or given to any director of the offeree corporation or any corporation which is deemed by virtue of sub-section (5.) of section six of this Ordinance to be related to that corporation as compensation for loss of office or as consideration for, or in connexion with, his retirement from office.

3. The offer shall state—

(*a*) whether or not the offer is conditional upon acceptances of offers made under the take-over scheme being received in respect of a minimum number of shares and, if so, that number;

(*b*) if the shares are to be acquired in whole or in part for cash, the period within which payment will be made and the method of payment; and

(*c*) if the shares are to be acquired for a consideration other than cash, the period within which the offeree will receive that consideration.

4. Where the offer is conditional upon acceptances in respect of a minimum number of shares being received, the offer shall specify—

(*a*) a date as the latest date on which the offeror corporation can declare the offer to have become free from that condition; and

(*b*) a further period of not less than seven days during which the offer will remain open for acceptance.

PART B.

Requirements with which Statement Given by Offeror Corporation to Comply.

1. The statement shall—

(*a*) specify the names, descriptions and addresses of all the directors of the offeror corporation;

(*b*) contain a summary of the principal activities of the offeror corporation;

(*c*) specify the number and description and amount of marketable securities in the offeree corporation held by or on behalf of the offeror corporation or, if none are so held, contain a statement to that effect;

TENTH SCHEDULE—*continued.*

Part B—*continued.*

(*d*) if the shares are to be acquired for a consideration other than wholly in cash—

(i) set out the reports which, if the statement were a prospectus issued on the date on which notice of the take-over scheme is given to the offeree corporation, would be required to be set out in it under clauses 20 and 23 of the Fifth Schedule to this Ordinance; and

(ii) specify details of any alterations in the capital structure of the offeror corporation or of any subsidary of that corporation during the period of five years immediately preceding the date on which notice of the take-over scheme is given to the offeree corporation and particulars of the source of any increase in capital.

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

3. If the consideration for the acquisition of shares under the take-over scheme is to be satisfied in whole or in part by the payment of cash, the statement shall contain details of the arrangements that have been, or will be, made to secure payment of the cash consideration and, if no such arrangements have been or will be made, shall contain a statement to that effect.

4. The statement shall set out—

(*a*) whether or not it is proposed in connexion with the take-over scheme that any payment or other benefit shall be made or given to any director of the offeree corporation or of any corporation which is, by virtue of sub-section (5.) of section six of this Ordinance, deemed to be related to that corporation as compensation for loss of office or as consideration for, or in connexion with, his retirement from office and, if so, particulars of the proposed payment or benefit in respect of each such director;

(*b*) whether or not there is any other agreement or arrangement made between the offeror corporation and any of the directors of the offeree corporation in connexion with or conditional upon the outcome of the scheme and, if so, particulars of any such agreement or arrangement;

(*c*) whether or not there has been within the knowledge of the offeror corporation any material change in the financial position of the offeree corporation since the date of the last balance-sheet laid before the corporation in general meeting and, if so, particulars of any such change; and

(*d*) whether or not there is any agreement or arrangement whereby any shares acquired by the offeror corporation in pursuance of the scheme will or may be transferred to any other person and, if so—

(i) the names of the persons who are parties to the agreement or arrangement and the number, description and amount of the shares which will or may be so transferred; and

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

5. The succeeding provisions of this Part of this Schedule apply only where the consideration to be offered in exchange for shares of the offeree corporation consists in whole or in part of marketable securities issued or to be issued by the offeror corporation or by any other corporation.

TENTH SCHEDULE—*continued.*

Part B—*continued.*

6. Where the marketable securities are listed on or dealt in on a Stock Exchange, the statement shall state this fact and specify the Stock Exchanges concerned and specify—

(*a*) the latest available market sale price prior to the date on which notice of the take-over scheme is given to the offeree corporation;

(*b*) the highest and lowest market sale price during the three months immediately preceding that date and the respective dates of the relevant sales; and

(*c*) where the take-over scheme has been the subject of a public announcement in newspapers or by any other means prior to notice of the scheme being given to the offeree corporation, the latest market sale price immediately prior to the public announcement.

7. Where the securities are listed on or dealt in on more than one Stock Exchange, it is sufficient compliance with paragraph (*a*) of clause 6 of this Schedule if information with respect to the securities is given in relation to the Stock Exchange at which there have been the greatest number of recorded dealings in the securities in the three months immediately preceding the date on which notice of the take-over scheme is given to the offeree corporation.

8. Where the take-over scheme relates to securities which are not listed on or dealt in on a Stock Exchange, the statement shall contain all the information which the offeror corporation may have as to the number, amount and price at which the securities have been sold in the three months immediately preceding the date on which notice of the scheme is given to the offeree corporation and, if the offeror corporation has no such information, a statement to that effect.

PART C.

Requirements with which Statement Given by Offeree Corporation to Comply.

1. The statement shall indicate—

(*a*) whether or not the board of directors of the offeree corporation recommends to share holders the acceptance of take-over offers made, or to be made, by the offeror corporation under the take-over scheme; or

(*b*) that the board of directors of the offeree corporation does not desire to make a recommendation or consider themselves not justified in making a recommendation.

2. The statement shall set out—

(*a*) the number, description and amount of marketable securities in the offeree corporation held by or on behalf of each director of that corporation or, in the case of a director where none are so held, that fact;

(*b*) in respect of each such director of the offeree corporation by whom, or on whose behalf, shares to which the take-over scheme relates are held—

(i) whether or not the present intention of the director is to accept any take-over offer that may be made in pursuance of the take-over scheme in respect of those shares; or

(ii) that the director has not decided whether he will accept such a take-over offer;

(*c*) whether or not any marketable securities of the offeror corporation are held by, or on behalf of, any director of the offeree corporation and, if so, the number, description and amount of the marketable securities so held;

TENTH SCHEDULE—*continued.*

Part C—*continued.*

(*d*) whether or not it is proposed in connexion with the take-over scheme that any payment or other benefit shall be made or given to any director of the offeree corporation or of any other corporation which is, by virtue of sub-section (5.) of section six of this Ordinance, deemed to be related to that corporation as compensation for loss of office or as consideration for, or in connexion with, his retirement from office and, if so, particulars of the proposed payment or benefit;

(*e*) whether or not there is any other agreement or arrangement made between any director of the offeree corporation and any other person in connexion with or conditional upon the outcome of the take-over scheme and, if so, particulars of any such agreement or arrangement;

(*f*) whether or not any director of the offeree corporation has any interest in any contract entered into by the offeror corporation and, if so, particulars of the nature and extent of such interest;

(*g*) if the shares to which the scheme relates are not listed on or dealt in on a Stock Exchange, all the information which the offeree corporation may have as to the number, amount and price at which any such shares have been sold in the six months preceding the date on which notice of the take-over scheme was given to the offeree corporation; and

(*h*) whether or not there has been any material change in the financial position of the offeree corporation since the date of the last balance-sheet laid before the corporation in general meeting and, if so, particulars of such change.