



ANNO UNDECIMO

## ELIZABETHAE II REGINAE

A.D. 1962

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## No. 56 of 1962

An Act to consolidate and amend the Law relating to  
Companies.

[Assented to 22nd November, 1962.]

BE IT ENACTED by the Governor of the State of South  
Australia, with the advice and consent of the Parliament  
thereof, as follows :

## PART I.

PART I.

## PRELIMINARY.

1. This Act may be cited as the "Companies Act, 1962".

Short title.

2. (1) This subsection and subsection (3) of this section shall  
come into operation on the day on which the Governor assents  
to this Act.

Commence-  
ment.

(2) Except as provided by subsection (1) of this section, this  
Act shall come into operation on a day to be fixed by procla-  
mation.

(3) Where, prior to the coming into operation of this Act as  
provided by subsection (2) of this section, a private company,  
within the meaning of section 38 of the Companies Act,  
1934-1960, determines to become and converts to—

(a) a proprietary company under the provisions of  
section 37 of the Companies Act, 1934-1960 ; or

## NOTES.

The abbreviations used in the marginal references to other Acts are references to  
the following Acts as amended :—

U.K. : 11 and 12 Geo. VI. 1948 (Imperial).

N.S.W. : New South Wales No. 33 of 1936.

Vic. : Victoria No. 6455 of 1958.

Qsld. : Queensland No. 53 of 1931.

S.A. : South Australian Companies Act 1934-1960.

W.A. : Western Australia Companies Act 1943-1960.

Tas. : Tasmania No. 29 of 1959.

**PART I.**

(b) a public company under the provisions of section 38 of that Act,

no fee shall be payable under that Act in respect of such conversion, and the Registrar on being satisfied that any document relating or incidental to such conversion complies with the requirements of that Act other than those of section 321 thereof, may accept the document for filing or registration under that Act, notwithstanding that the document does not bear a certificate as required by that section.

Division into  
Parts.

**3.** This Act is divided into Parts, Divisions and Subdivisions as follows :—

**PART I.**—Preliminary ss. 1-6.

**PART II.**—Administration of Act ss. 7-13.

**PART III.**—Constitution of Companies ss. 14-36—

**DIVISION I.**—Incorporation ss. 14-18 :

**DIVISION II.**—Powers, etc. ss. 19-36 :

**PART IV.**—Shares, Debentures and Charges ss. 37-110—

**DIVISION I.**—Prospectuses ss. 37-47 :

**DIVISION II.**—Restrictions on Allotment and Commencement of Business ss. 48-53 :

**DIVISION III.**—Shares ss. 54-69 :

**DIVISION IV.**—Debentures ss. 70-75 :

**DIVISION V.**—Interests other than Shares, Debentures, etc. ss. 76-89 :

**DIVISION VI.**—Title and Transfers ss. 90-99 :

**DIVISION VII.**—Registration of Charges ss. 100-110 :

**PART V.**—Management and Administration ss. 111-160—

**DIVISION I.**—Office and Name ss. 111-113 :

**DIVISION II.**—Directors and Officers ss. 114-134 :

**DIVISION III.**—Meetings and Proceedings ss. 135-149 :

**DIVISION IV.**—Register of Members ss. 150-157 :

**DIVISION V.**—Annual Return ss. 158-160 :

**PART VI.**—Accounts, Audit and Investigation ss. 161-180—

**DIVISION I.**—Accounts ss. 161-164 :

**DIVISION II.**—Audit ss. 165-167 :

**DIVISION III.**—Inspection ss. 168-171 :

**DIVISION IV.**—Special Investigations ss. 172-180 :

**PART VII.**—Arrangements and Reconstructions ss. 181-186.

**PART VIII.**—Receivers and Managers ss. 187-197.

**PART IX.**—Official Management ss. 198-215.

## PART X.—Winding Up ss. 216-318—

DIVISION I.—Preliminary ss. 216-220 :

DIVISION II.—Winding Up by the Court ss. 221-253—

SUBDIVISION (1)—General ss. 221-230 :

SUBDIVISION (2)—Liquidators ss. 231-240 :

SUBDIVISION (3)—Committees of Inspection  
ss. 241-242 :SUBDIVISION (4)—General Powers of Court  
ss. 243-253 :

DIVISION III.—Voluntary Winding Up ss. 254-276—

SUBDIVISION (1)—Introductory ss. 254-257 :

SUBDIVISION (2)—Provisions applicable only to  
Members' Voluntary Winding  
Up ss. 258-259 :SUBDIVISION (3)—Provisions applicable only to  
Creditors' Voluntary Winding  
Up ss. 260-263 :SUBDIVISION (4)—Provisions applicable to every  
Voluntary Winding Up  
ss. 264-276 :DIVISION IV.—Provisions applicable to every mode  
of Winding Up ss. 277-313—

SUBDIVISION (1)—General ss. 277-290 :

SUBDIVISION (2)—Proof and Ranking of Claims  
ss. 291-292 :SUBDIVISION (3)—Effect on other Transactions  
ss. 293-299 :

SUBDIVISION (4)—Offences ss. 300-306 :

SUBDIVISION (5)—Dissolution ss. 307-313 :

DIVISION V.—Winding Up of Unregistered Com-  
panies ss. 314-318.

## PART XI.—Various Types of Companies, etc. ss. 319-361—

DIVISION I.—No-Liability Companies ss. 319-333 :

DIVISION II.—Investment Companies ss. 334-343 :

DIVISION III.—Foreign Companies ss. 344-361.

## PART XII.—General ss. 362-396—

DIVISION I.—Enforcement of Act ss. 362-373 :

DIVISION II.—Offences ss. 374-382 :

DIVISION III.—Miscellaneous ss. 383-396 :

PART XIII.—Special Provisions Relating to Local Pro-  
prietary and Private Companies ss. 397-399.

4. (1) The Acts mentioned in the First Schedule are hereby repealed.

(2) Unless the contrary intention appears in this Act—

(a) all persons, things and circumstances appointed or created by or under a provision of any Act hereby

Repeals and  
Savings.  
First Schedule.  
N.S.W.  
ss. 3, 4.  
Vic. s. 2.  
Qld. s. 4.  
S.A. ss. 2, 4-6,  
325, 326.  
W.A. s. 4.  
Tas. s. 2.

repealed and existing or continuing under any such Act immediately before the commencement of this Act shall, under and subject to this Act, continue to have the same status, operation and effect as they respectively would have had if such Act had not been so repealed ; and

(b) in particular, and without affecting the generality of the foregoing paragraph—

(i) all persons appointed under or by virtue of the provisions of any Act hereby repealed, and holding office immediately before the commencement of this Act, shall continue in office as if this Act had been in force at the time when they were appointed and they had been appointed hereunder, and this Act shall apply to them accordingly ; and

(ii) such repeal shall not affect the incorporation of any company before the commencement of this Act or disturb the continuity of status, operation or effect of any Order in Council, order, rule, regulation, scale of fees, appointment, conveyance, mortgage, deed, agreement, resolution, direction, instrument, document, memorandum, articles, nomination, affidavit, call, forfeiture, minute, assignment, register, registration, transfer, list, licence, certificate, security, notice, compromise, arrangement, right, priority, liability, duty, bond, obligation, proceeding, matter or thing made, done, effected, given, issued, passed, taken, validated, entered into, executed, lodged, accrued, incurred, existing, pending or acquired before the commencement of this Act by or under any Act hereby repealed.

(3) Nothing in this Act shall affect—

(a) Table A of the First Schedule to the repealed Act or any part thereof (either as originally enacted or as altered in pursuance of any statutory power) or the corresponding Table in any former enactment relating to companies (either as originally enacted or as so altered) so far as the same applies to any company existing at the commencement of this Act ;

(b) Table B of the First Schedule to the repealed Act or any part thereof (either as originally enacted or as altered in pursuance of any statutory power) or the corresponding Table in any former enactment relating to mining companies (either as originally enacted or as so altered) so far as the same applies to any company existing at the commencement of this Act; or

(c) the operation of the Trade Union Act, 1876-1935.

(4) The provisions of this Act with respect to winding up other than the provisions of Subdivision (5) of Division IV of Part X shall not apply to any company or society the winding up of which was commenced before the commencement of this Act, but every such company or society shall be wound up in the same manner and with the same incidents as if this Act had not come into operation and for the purposes of the winding up the Act or Acts under which the winding up commenced shall be deemed to remain in full force.

(5) In the application of paragraph (b) of sub-section (1) of section 9 to a person who became indebted to a corporation before the commencement of this Act, that indebtedness shall until the expiration of five years after the commencement of this Act 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 auditor of the corporation if this Act had not come into force.

(6) Paragraph (c) of subsection (1) of section 9 shall not apply to any person in relation to a proprietary company or a private company until the expiration of twelve months after the commencement of this Act if he was appointed as auditor of that company before the commencement of this Act.

(7) Where in any other Act or in any document, rule or regulation a reference is made to the repealed Act or any corresponding previous enactment or any provision of such Act or enactment, that reference shall, so far as it is applicable, be read as a reference to this Act or to the corresponding provisions, if any, of this Act.

(8) The mention of particular matters in this section, or in any other section shall not affect the general application of the Acts Interpretation Act, 1915-1957, as amended, to the repeals effected by this Act, except where that Act is inconsistent with this Act.

(9) Any fund, register or account kept or continued under any provision of the repealed Act shall be deemed to be part of the fund, register or account kept or required to be kept under the corresponding provision of this Act.

(10) Subject to this Act a company (not being a foreign company) formed and registered under the repealed Act or registered under or subject to The Companies Act, 1892, shall be deemed to be incorporated under this Act, and this Act shall extend and apply to the company accordingly, and any reference in this Act, 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 Act or was registered under or subject to The Companies Act, 1892.

(11) This Act applies to a corporation registered, but not incorporated, under the repealed Act or any corresponding previous enactment in the same manner as it applies to corporations registered but not incorporated under this Act.

(12) Where, within a period of six months before the commencement of this Act, a prospectus was registered under the repealed Act and the prospectus complied with the requirements of the repealed Act, the prospectus shall, for the purposes of this Act, 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 Act.

(13) Where, before the date of the commencement of this Act, an inspector had been appointed to investigate the affairs of a company under section 156, 158 or 158a of the repealed Act and the investigation had not been completed before that date, the provisions of the repealed Act shall continue to apply to and in relation to the investigation as if this Act had not come into operation.

**Interpretations.**

U.K. 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.

**5. (1) In this Act unless the contrary intention appears—**

“annual general meeting”, in relation to a company, means a meeting of the company required to be held by section 136 :

“annual return” means—

(a) in relation to a company having a share capital, the return required to be made by section 158; and

(b) in relation to a company not having a share capital, the return required to be made by section 159,

and includes any document accompanying the return :

“articles” means articles of association :

“banking corporation” means a bank as defined in section 5 of the Banking Act 1959 of the Commonwealth, as amended :

“Board” means Companies Auditors Board constituted under this Act :

“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 157 ;

(b) in relation to a foreign company, a branch register of members of the company kept in pursuance of section 354 :

“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 any agreement to give or execute a charge or mortgage whether upon demand or otherwise :

“commencement of this Act” means the day on which this Act comes into operation as provided by subsection (2) of section 2 :

“company” means a company incorporated or deemed to be incorporated under or pursuant to this Act and includes a company as defined in the repealed Act, but does not include a foreign company :

“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 to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up :

“company limited by shares” means a company formed on the principle of having the liability of its members limited by the memorandum to the amount (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 formed or incorporated whether in the State or outside the State and includes any foreign company but does not include—

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

(b) any body corporate (not being a company) incorporated by or under any Act, other than this Act or any corresponding previous enactment ; or

(c) any corporation sole :

“Court” means the Supreme Court or a Judge thereof and includes the Master or Deputy Master of the Supreme Court when exercising, in accordance with rules of Court, the jurisdiction of that Court :

“creditors’ voluntary winding up” means a winding up under Division III 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 380 :

Of. S.A.  
s. 165 (6).

“director” includes any person occupying the position of director of a corporation by whatever name called, and includes a 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 fees, percentages and 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 any holding company or subsidiary

of that company, whether made or given to him in his capacity as a director or auditor or otherwise in connection 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 subsections (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 Act or any corresponding previous enactment :

“financial year”, in relation to any 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 State ;  
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 State : cf. S.A. n. 364.

“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 Act or any corresponding previous enactment :

“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 of any 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 section 76 :

“members’ voluntary winding up” means a winding up under Division III of Part X where a declaration has been made and lodged in pursuance of section 257 :

“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 sub-paragraph (a) of paragraph 4 of the Fifth Schedule as the minimum amount which 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 State 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—

- (i) a receiver who is not also a manager ;
- (ii) a receiver and manager appointed by the Court ; or
- (iii) a liquidator appointed by the Court or by the creditors :

“official liquidator” means a person appointed as an official liquidator under section 11 :

“official manager” means a person appointed as an official manager under Part IX :

“Part” means Part of this Act :

“principal register”, in relation to a company, means the register of members of the company kept in pursuance of section 151 :

“printed” includes type-written or lithographed or reproduced by any mechanical means :

“private company” means a company—

(a) which immediately prior to the commencement of this Act was a private company under the provisions of the repealed Act and has not converted to a proprietary company or a public company in accordance with section 26 of this Act ;

(b) the memorandum or articles of which contain the prohibition and provision required by paragraphs (a) and (b) of subsection (1) of section 38 of the repealed Act to be included in its memorandum or articles and have contained that prohibition and provision continuously since the commencement of this Act ; and

(c) which has not ceased to be a private company by virtue of section 27 :

“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 connection 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 any person by reason only of his acting in a professional capacity :

“proprietary company” means—

(a) a company which immediately prior to the commencement of this Act was a proprietary company under the provisions of the repealed Act ;

(b) a company incorporated as a proprietary company by virtue of section 15 ; or

(c) a company converted into a proprietary company pursuant to the provisions of subsection (1) of section 26,

being a company which has not ceased to be a proprietary company by virtue of section 26 or section 27 :

- “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 or a private company :
- “registered” means registered under this Act or any corresponding previous enactment :
- “registered company auditor” means a person registered as a company auditor or deemed to be registered as such under section 9 and in relation to a corporation, not being 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 or a person who is deemed to be registered as a liquidator under section 9 :
- “Registrar” means the Registrar of Companies under this Act and includes any Deputy or Assistant Registrar of Companies :
- “repealed Act” means The Companies Act, 1934, as amended :
- “resolution for voluntary winding up” means the resolution referred to in section 254 :
- “Schedule” means Schedule to this Act :
- “section” means section of this Act :
- “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 135 :
- “statutory report” means the report referred to in section 135 :
- “Table A” means Table A in the Fourth Schedule :
- “Table B” means Table B in the Fourth Schedule :
- “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 Act 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.

Directors.

(3) For the purposes of this Act 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.

When statement untrue.

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

When statement included in prospectus.

(5) For the purposes of this Act any 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.

Invitation to lend money deemed invitation to purchase debentures.

(6) Any reference in this Act to offering shares or debentures to the public shall, unless the contrary intention appears, be construed as including a reference to offering them 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—

As to what constitutes an offer to the public.  
Cf. S.A. s. 50 (3), (6).

- (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 270 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 subsection (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 subsection (7) of this section, but without limiting the generality of that subsection—

(a) a reference in that subsection 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 III of Part XI applies to it) is a foreign company of a kind referred to in subsection (5) of section 348 ;

(b) a reference in that subsection 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 24, or under any corresponding previous enactment, 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.

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

Definition of subsidiary and holding 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)

(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 subsection (1) of this 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 subsection, 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 subsection) 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 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 Act 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 Act be deemed to be related to each other.

## PART II.

## PART II.

## ADMINISTRATION OF ACT.

7. (1) Subject to the Public Service Act, 1936, as amended, the Governor may appoint—

- (a) a person to be the Registrar of Companies to have the charge and control of the office of the Registrar of Companies and to carry out the duties and functions vested by or under this or any other Act in the Registrar ; and
- (b) such Deputy Registrars of Companies and Assistant Registrars of Companies and other officers as are required for the purposes of this Act.

Registrar of Companies.  
N.S.W. s. 7.  
Vic. s. 4.  
Qld. ss. 8, 881A.  
S.A. ss. 315, 317-319.  
W.A. s. 391.  
Tas. s. 5.  
Deputy and Assistant Registrars and officers.

(2) The persons appointed as Registrar of Companies and Deputy Registrar of Companies under the repealed Act and in office immediately before the commencement of this Act shall without further or other appointment be deemed to have been appointed Registrar of Companies and Deputy Registrar of Companies respectively for the purposes of this Act and, subject to this Act, shall continue to hold those offices respectively in terms of their respective appointments.

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

(4) All courts, judges and persons acting judicially shall take judicial notice of the seal and signature of the Registrar and of the signature of any Deputy or Assistant Registrar.

Certain signatures to be judicially noticed.

(5) Any reference to the Registrar of Companies in any Act, Order, regulation, rule, instrument or document relating to any matter under or in connection with this Act or any corresponding previous enactment or any other Act or enactment shall be deemed and taken to refer to the Registrar unless the context otherwise requires.

Transitory.

(6) For the purpose of ascertaining whether a corporation is complying with the provisions of this Act, the Registrar or any person authorized by him may inspect any books, minute book, register or record required by or under this Act to be kept by the corporation.

(7) No person shall make an inspection in pursuance of subsection (6) of this section unless he has made a declaration in the prescribed form.

(8) A person—

- (a) who makes an inspection in pursuance of subsection (6) of this section before he has made a declaration referred to in subsection (7) of this section ; or

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

shall be guilty of an offence against this Act.

Penalty : One hundred pounds.

(9) A company or any officer shall, on being required by the Registrar or a person so authorized, produce any books, minute book, register or record referred to in subsection (6) of this section.

Penalty : One hundred pounds.

(10) A company or any officer shall not obstruct or hinder the Registrar or person so authorized while exercising any of the powers referred to in subsection (6) of this section.

Penalty : One hundred pounds.

(11) There shall be paid to the Registrar—

- (a) the fees specified in the Second Schedule ; and
- (b) such other fees as are prescribed,

and 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.

(12) The Registrar shall have a seal which shall bear the words "Registrar of Companies, South Australia" and any documents accepted for registration, or issued, by the Registrar may be authenticated by that seal.

Fees.  
N.S.W.  
ss. 368, 380.  
Vic. s. 9.  
Qld. s. 10.  
S.A. s. 317.  
W.A. s. 398.  
Tas. s. 11.

Companies  
Auditors  
Board.  
Vic. s. 5.  
S.A. s. 370.  
W.A. ss. 137,  
138, 402, 406.  
Tas. s. 138.

8. (1) For the purposes of this Act there shall be a Companies Auditors Board whose functions shall be to effect and control the registration of company auditors and liquidators as hereinafter prescribed.

(2) Except as provided by subsection (3) of this section, the Board shall consist of three members appointed by the Governor of whom—

- (a) one shall be a Local Court Judge, a special magistrate or a duly qualified practitioner of the Supreme Court of not less than five years' standing who shall be the chairman of the Board ;
- (b) one shall be selected from a panel of five names nominated by the State Council of the Institute of Chartered Accountants in Australia ; and

(c) one shall be selected from a panel of five names nominated by the Council of the State Division of the Australian Society of Accountants.

(3) If the appropriate Council referred to in paragraph (b) or (c) of subsection (2) of this section fails to submit in writing to the Minister, within two months after being requested by the Minister in writing so to do, a panel of names nominated by that Council for the selection of a member of the Board, the Governor may appoint such person as he thinks fit to be that member without having regard to any such panel.

(4) During the absence from a meeting of a member of the Board, his deputy, appointed in accordance with this section, shall be 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.

(5) The Minister may as the necessity arises appoint such person as he considers fit and proper to be the deputy of a member.

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

(7) Any two members of the Board shall have and may exercise all or any of the powers and authorities of the Board.

(8) Each member and each deputy when acting in the absence of a member of the Board shall be entitled to such fees and allowances as are prescribed.

(9) A member shall hold office for such term not exceeding three years as is fixed by the terms of his appointment and shall retire at the end of that term, but may be re-appointed.

(10) A member shall cease to hold office upon his removal from office at any time.

(11) The Registrar of Companies, or in his absence, the Deputy Registrar of Companies shall be the Registrar of the Board.

(12) On the commencement of this Act the Companies Auditors' and Liquidators' Board constituted under the repealed Act shall cease to exist.

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

Company  
auditors and  
liquidators.  
Vic. s. 5.  
S.A. ss. 154,  
371.  
W.A. ss. 137,  
138, 402, 456.  
Tas. s. 138.

- (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 subsection (5) of section 6 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 subsection (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 subsection (5) of section 6 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 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 for any company and shall not prepare, for or on behalf of a company, any report required by this Act to be prepared by a registered company auditor unless—

- (a) all the partners of the firm are registered company auditors and, where the firm is not registered as a firm or the business name under which they are carrying on business is not registered under the law of the State, a return 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 subsection (1) of this section from acting as the auditor of the company.

(5) If a firm contravenes subsection (4) of this section each partner of the firm shall be guilty of an offence.

Penalty : One hundred pounds.

(6) No company or person shall 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 no company or person shall 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 immediately before the commencement of this Act was the holder of a current auditor's licence under the repealed Act ;
- (b) 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 prescribed on the recommendation of the Board as a body for the purposes of this subsection ;
- (c) who is a registered company auditor in any State or Territory of the Commonwealth ;
- (d) 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' and in commercial law (including company law) of two years' duration ;
- (e) who holds the diploma or associate diploma in accountancy of the South Australian Institute of Technology or the certificate in accountancy of a prescribed Institute of Technology or Technical College ; or
- (f) who has satisfied the Board that he has a thorough knowledge of accounts and auditing and of the provisions of this Act and of such other subjects as may be prescribed,

shall, if the Board is satisfied with his general conduct and character, be entitled on the 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 person who immediately before the commencement of this Act was the holder of a current auditor's licence or a current liquidator's licence under the repealed Act shall be deemed to have been registered by the Board as a company auditor or as a liquidator, as the case may be, under this section on the date of the commencement of this Act.

(9) Any registered company auditor may apply to the Board for registration or for the renewal of his registration as a liquidator and the Board if satisfied as to his experience and capacity shall, on his giving security in the prescribed manner and amount and on payment of the prescribed fee, register such person or renew such person's registration, as the case may be, as a liquidator.

(10) Any security furnished under the repealed Act by a person deemed to have been registered as a liquidator by virtue of subsection (8) of this section shall, notwithstanding subsection (1) of section 4, continue to be subject to and governed by the provisions of the repealed Act and the regulations thereunder, but the registration of that person as a liquidator shall not be renewed unless fresh security is given by that person as required under this Act.

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

(12) 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 as well as the abilities of the person but shall not do so without giving to the person an opportunity of being heard.

S.A. s. 371 (13).

(13) The Board may, in the exercise of its functions under this section, exercise any powers which a local court could exercise for procuring the attendance of witnesses, and punishing witnesses who fail to attend when required, and administering oaths and affirmations and taking evidence on oath, and the provisions of the Local Courts Act, 1926, as amended, as to these matters shall be construed so as to apply to the proceedings of the Board under this section.

(14) 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 punish or deal with him in any one or more of the following ways :—

(a) Admonish or reprimand him ;

(b) Require him to pay such amount as the Board shall determine as the costs of and incidental to the inquiry by the Board ;

- (c) Suspend his registration for a period not exceeding one year ;
- (d) Cancel his registration.

(15) The amount of any costs so required to be paid may be recovered in any court of competent jurisdiction as a debt due to the Crown.

(16) Any person aggrieved by any decision of the Board may within three months from the date of his receiving notice thereof appeal to the Court from such decision and thereupon the Court may confirm, vary or reverse the decision and may direct the Board to register any person whom the Board has refused to register.

(17) A person who wilfully gives false evidence in any proceedings before the Board shall be guilty of wilful and corrupt perjury. S.A. s. 371 (14).

(18) Subsections (1) and (6) of this section do not apply to the Auditor-General of the State or of the Commonwealth when acting in the exercise of his powers or the performance of his duties.

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—

Disqualification of liquidators.  
Vic. s. 202 (1).  
S.A. ss. 193,  
293, 371.  
W.A. s. 184.

- (a) if he is not a registered liquidator or a corporation authorized by an Act 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 subsection (5) of section 6 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 subsection (1) of this section shall not apply to a members' voluntary winding up of an exempt proprietary company and paragraph (c) of that subsection shall 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 subsection (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 subsection (5) of section 6 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 shall affect any appointment of a liquidator made before the commencement of this Act.

Official  
liquidators.  
N.S.W. s. 227.  
Vic. s. 8.  
W.A. s. 196.

11. For the purpose of conducting proceedings in winding up companies and assisting the Court therein, the Minister 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 for the due fulfilment of his duties as such as is prescribed, and may revoke any appointment so made.

Registers,  
records, docu-  
ments, returns,  
etc.  
N.S.W. ss. 369,  
378.  
Vic. s. 6.  
Qld. ss. 9, 377.  
S.A. ss. 316,  
320, 324.  
W.A. ss. 392,  
396, 401.  
Tas. s. 7.  
Inspection of  
register.

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

(2) Any 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 Act or a copy of or extract from any document kept by the Registrar to be given or certified by the Registrar.

Evidentiary  
value of copies  
certified by  
Registrar.

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

Evidence of  
statutory  
requirements.

(4) In any legal proceedings a certificate under the hand and seal of the Registrar that a requirement of this Act 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 that date,

shall be received as *prima facie* 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 Act ; 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 resubmitted or that a fresh document be submitted in its place.

(6) Any 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 which may confirm the refusal, act or decision or give such directions in the matter as seem proper or otherwise determine the matter, but this subsection shall 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 Act ; or
- (b) which is declared by this Act to be conclusive or final or is embodied in any document declared by this Act 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 Libraries Board of South Australia, subject to the provisions of the Libraries and Institutes Act, 1939, as amended—

(a) in the case of a 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

Appeal.  
Destruction,  
etc. of old  
records.

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.

Enforcement  
of duty to  
make returns.  
S.A. s. 320.

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

(a) any provision of this Act 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 resubmit 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 a court of summary jurisdiction may, on an application by any member or creditor of the corporation or by the Registrar, make an order directing the corporation and 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 enactment 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 State, 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 for all purposes shall, from such date as is mentioned in the certificate as the date of the filing or lodging of the original with the Registrar, have the same force and effect as the original.

(5) The Court may, by order upon application by any person aggrieved and after notice to any other person whom the Court directs, 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 and 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) No fee shall be payable upon the lodging of a document lodged in pursuance of this section.

### PART III.

### PART III.

## CONSTITUTION OF COMPANIES.

### DIVISION I.—INCORPORATION.

### DIVISION I.

14. (1) Subject to this Act, 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 Act as to registration, form an incorporated company.

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.

s. 14. In *re* RIVERTON SHEEP DIP (1943) S.A.S.R. 344. Held that the object of an association carrying on business of sheep dipping for its members was the acquisition of gain, not by it as a body but by the individual members, and that the association was an association to which section 9 (2) of the Companies Act, 1934, applied.

In *re* PROPRIETARY ARTICLES TRADE ASSOCIATION OF SOUTH AUSTRALIA INCORPORATED (1945) S.A.S.R. 88. Held that a trade protection association of manufacturers, wholesalers and retailers which listed prices to be maintained by the association but which neither traded nor made any profit was not required by section 9 (2) of the Companies Act, 1934, to be registered as a company.

## PART III.

## DIVISION I.

(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 guarantee ;
- (d) an unlimited company ; or
- (e) in the case of a mining company, a no-liability company.

Prohibition of unincorporated associations of more than twenty members for gain.  
U.K. s. 484.  
S.A. s. 9.

(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 Act or is formed in pursuance of some other Act or letters patent.

Proprietary company.  
U.K. s. 28.  
N.S.W. s. 37.  
Vic. s. 13.  
Qld., s. 88.  
S.A. ss. 37 (1), 40.  
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 the company, by its memorandum or articles—

- (a) restricts the right to transfer its shares ;
- (b) limits 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) prohibits any invitation to the public to subscribe for any shares in or debentures of the company ; and
- (d) prohibits 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) Where, upon the commencement of this Act, neither the memorandum nor the articles of a company that is a proprietary company by virtue of paragraph (a) of the definition of "proprietary company" in subsection (1) of section 5 contain the limitation and prohibitions required by subsection (1) of this section to be included in the memorandum or articles of a company that may be incorporated as a proprietary company, the articles of the company shall, unless altered in accordance with subsection (4) of this section, be deemed to include each such limitation and prohibition that is not so included.

(3) Where a limitation or prohibition deemed to be included in the articles of a company under subsection (2) of this section is inconsistent with any provision already included in the memorandum or articles of the company, that limitation or prohibition shall, to the extent of the inconsistency, prevail.

(4) 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 or deemed to be included in its articles, but not so that the memorandum and articles of the company cease to include the limitation required by paragraph (b) of subsection (1) of this section to be included in the memorandum or articles of a company that may be incorporated as a proprietary company.

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 Act, and the Registrar, on payment of the appropriate fees, shall, subject to this Act, register the company by registering the memorandum and articles (if any).

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. 23-25,  
36.  
W.A. ss. 24-26,  
36.  
Tas. s. 14.

(2) The Registrar may, if he thinks fit, require to be lodged with him a statutory declaration 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 Act have been complied with, and the Registrar may accept such a declaration as sufficient evidence of compliance.

Statutory  
declarations.

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

Certificate of  
incorporation.

(a) a company limited by shares ;

(b) a company limited by guarantee ;

s. 16. *THE TUMBLING WATERS FREEHOLD COMPANY v. JURIET* (1874) 8 S.A.L.R. 131; 3 Austr. Digest 696. Where on the faith of a prospectus a person applied for shares in a company and the objects of the company in the memorandum of association differed materially from the objects set out in the prospectus, held under the Companies Act, 1864, that he had not agreed to become a member of the company as constituted by the memorandum of association.

*WINN'S GOLD MINING COMPANY (NORTHERN TERRITORY) LIMITED v. WYLD* (1874) 8 S.A.L.R. 66. Held under the Companies Act, 1864, that the defendant's application for shares constituted an agreement under which he was liable, and was an authority to put his name on the register of shareholders.

**PART III.**  
**DIVISION 1.**

- (c) a company limited both by shares and 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.

**Effect of  
incorporation.**

(4) On and from the date of incorporation specified in the certificate of incorporation, but subject to this Act, 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 Act.

**Members of  
company.**

(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 which is its holding company, and any allotment or transfer of shares in a company to its subsidiary shall be void.

(2) Subsection (1) of this section shall not apply where the subsidiary is concerned as personal representative, or where it is concerned as trustee, unless the holding company or a subsidiary thereof 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 which includes the lending of money.

(3) This section shall not prevent a subsidiary which is, at the commencement of this Act, a member of its holding company, from continuing to be a member but, subject to subsection (2) of this section, the subsidiary shall have no right to vote at meetings of the holding company or any class of members thereof.

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

- (a) subject to subsection (2) of this section, the subsidiary shall have no right to vote at meetings of the holding company or any class of members thereof; 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 subsection (2) of this section, subsections (1), (3) and (4) thereof shall apply in relation to a nominee for a corporation which is a subsidiary as if references in those subsections 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, the reference in this section to shares, whether or not it 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.

18. (1) The memorandum of every company shall be printed and 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;

Requirements  
as to memo-  
randum.  
N.S.W.  
ss. 10-13.  
Vic. s. 15.  
Qld. ss. 14,  
15.  
S.A. ss. 11-15.  
W.A. ss. 13-15  
Tas. s. 15.

## PART III.

DIVISION I.

- (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, addresses and occupations of the subscribers thereto ; 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 (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 shall mean that the liability of the members is limited to the amount (if any) unpaid on the shares respectively held by them.

DIVISION II.

## DIVISION II.—POWERS, ETC.

Powers.  
Third  
Schedule.Vic. s. 15.  
S.A. s. 35.  
W.A. s. 35.  
Tas. s. 15.**19.** The powers of a company shall 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 inconsistent with or expressly excluded or modified by the memorandum or articles the powers set forth 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 shall

be 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 upon 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) any proceedings by the company or by any member of the company against the present or former officers of the company ; or

(c) any petition by the Minister to wind up the company.

(3) If the unauthorized act, conveyance or transfers sought to be restrained in any proceedings under paragraph (a) of subsection (2) of this 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.

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

(2) In addition to observing and, subject to any other provision of this Act, 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 or the making of any such order, lodge with the Registrar a copy of such resolution (together with notice thereof in the prescribed form) or an office copy of such order together with a copy of such other document, if any, and (unless the Registrar dispenses therewith) a printed copy of the memorandum as altered, and if default is made in complying with this

General provision as to alteration of memorandum.  
N.S.W. s. 14.  
Vic. s. 16.  
Qld. s. 16.  
S.A. ss. 16, 68.  
W.A. s. 17.  
Tas. s. 16.

subsection the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty : Fifty pounds. Default penalty.

(3) The Registrar shall register every resolution, order or other document lodged with him under this Act that affects the memorandum of a company and, where an order is so registered, shall certify the registration of that order.

(4) The certificate of the Registrar referred to in subsection (3) of this section shall be conclusive evidence that all the requirements of this Act 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 accordance with the alteration made to the memorandum.

Names of companies.

U.K. s. 17.  
N.S.W. ss. 10, 11, 82, 37, 44.  
Vic. s. 17.  
Qld. s. 29.  
S.A. ss. 27, 27a, 37 (2).  
W.A. s. 28.  
Tas. s. 17.

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

(2) The Minister shall cause a direction given by him under subsection (1) of this section to be published in the *Government Gazette* and a copy of the direction to be forwarded to the Attorney-General of the Commonwealth and the Attorney-General of each State of the Commonwealth.

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

(4) A no-liability company shall have "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) No description of a company shall be deemed 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 ;

s. 22. S.A. INSURANCE COMPANY (LIMITED) v. S.A. MUTUAL FIRE INSURANCE COMPANY LIMITED (1881) 15 S.A.L.R. 108; 3 Austr. Digest 577. Injunction granted to prevent a company from carrying on business under a name similar to that of an existing 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 subsection (1) of this section, he shall reserve the proposed name for a period of two months from the date of the 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 Act or under any other Act, 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.

## PART III.

## DIVISION II.

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 subsection (1) of section 22.

(2) If the name of a company is (whether through inadvertence or otherwise and whether originally or by change of name) a name by which the company could not be registered without contravention of subsection (1) of section 22, the company may by special resolution change its name to a name by which the company could be registered without contravention of that subsection and, if the Registrar so directs, shall so change it within six weeks after the date of direction or such longer period as the Registrar allows unless the Minister by written notice annuls such direction, and if the company fails to comply with the direction it shall be guilty of an offence against this Act.

Penalty : Fifty pounds. Default penalty.

(3) Where the name of a company incorporated pursuant to a previous enactment corresponding with this Act has not been changed since the commencement of this Act, the Registrar shall not, except with the approval of the Minister, exercise his power under subsection (2) of this section to direct the company to change its name.

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

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 Minister that a proposed limited company 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, and will apply its profits (if any) or other income in promoting its objects and will prohibit the payment of any dividend to its members, the Minister 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 Minister—
- (a) that the objects of a limited company are restricted to those specified in subsection (1) of this 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 Minister may by licence authorize the company to change its name to a name which 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 Minister thinks fit, and those conditions shall be binding on the company and shall, if the Minister 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 in respect of which a licence has been issued under this section or under any corresponding previous enactment shall, while the licence is in force, be exempted from complying with the provisions of this Act relating to the use of the word "Limited" as any part of its name, and, except where the Minister 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 under this section or under any corresponding previous enactment may at any time be revoked by the Minister 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 Act but before a licence is so revoked the Minister shall give to the company notice in writing of his intention and shall afford it an opportunity to be heard.

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.

Registration of unlimited company as limited, etc.  
U.K. s. 18.  
N.S.W. s. 31.  
Vic. s. 20.  
Qld. s. 28.  
S.A. s. 26.  
W.A. s. 27.  
Tas. s. 20.

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

- (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

**PART III.**  
**DIVISION II.**

- (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 which had been lodged with him on the occasion of or subsequent to the incorporation of the company.

(4) The conversion shall take effect on the issue of the certificate of incorporation under subsection (2) of this section.

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

Change from  
public or  
private to  
proprietary  
company.

N.S.W. s. 37.  
Vic. s. 21.  
Qld., ss. 38,  
39.  
S.A. ss. 37,  
38 (3).  
W.A. s. 37.  
Tas., s. 21.

**26.** (1) A public company having a share capital (other than a no-liability company) or a private 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 subsection (1) of section 15.

(2) A proprietary company or a private 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, in the case of the proprietary company, 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 subsection (2) of section 52 has been complied with,

and thereupon—

(i) in the case of the proprietary company—such restriction, limitation and prohibitions referred to in subsection

Change from  
proprietary  
or private  
to public  
company.

(1) of section 15 as has or have been included or deemed to be included in the memorandum or articles of the proprietary company shall cease to form part of its memorandum or articles ; and

(ii) in the case of the private company—the prohibition and provision referred to in paragraphs (a) and (b) of subsection (1) of section 38 of the repealed Act which were included in the memorandum or articles of the private company shall cease to form part of its memorandum or articles.

(3) On compliance by a company with the provisions of subsection (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 subsection (1) or subsection (2) of this section shall not affect the identity of the company or any rights or obligations of the company or render defective any legal proceedings by or against the company, and any legal proceedings that could have been continued or commenced by or against it prior to the conversion may notwithstanding 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.

(5) No fees shall be payable under this Act in respect of a conversion prior to the first day of July, one thousand nine hundred and sixty five of a private company to a proprietary company or a public company.

**27.** (1) Where, on the application of the Minister or of any member or creditor of the company, the Court is satisfied—

(a) that default has been made in relation to a proprietary company in complying with a prohibition of a kind specified in paragraph (c) or (d) of subsection (1) of section 15 that is included, or is deemed to be included, in the memorandum or articles of the company ; or

(b) that default has been made in relation to a private company in complying with a prohibition of a kind specified in paragraph (a) of subsection (1) of section 38 of the repealed Act 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 the order, the company ceased to be a proprietary company or a private company, as the case requires.

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

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DIVISION II.

(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 subsection (1) of section 15 that is included, or is deemed to be included, in the memorandum or articles of the company ;
- (b) a proprietary company or a private company has been convicted of an offence under subsection (7) of this section ;
- (c) the memorandum or articles of a proprietary company have been so altered that they no longer include the restriction, limitation and prohibitions specified in subsection (1) of section 15 ;
- (d) a proprietary company has ceased to have a share capital ; or
- (e) the memorandum or articles of a private company have been so altered that they no longer include the prohibition specified in paragraph (a) of subsection (1) of section 38 of the repealed Act,

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 or a private company, as the case may be.

(3) Where, under this section, the Court or the Registrar determines that a company has ceased to be a proprietary company or a private 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, if the Court or Registrar determines that it has ceased to be a proprietary company, 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 subsection (2) of section 52 has been complied with ; and
  - (iii) where an order has been made under subsection (1) of this section, an office copy of the order.

(4) Where the Court is satisfied that a default or alteration referred to in subsection (1) or subsection (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 or a private 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 subsection (3) of this section the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty : Fifty pounds. Default penalty.

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

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 subsection (1) of section 15 that is included, or deemed to be included, in the memorandum or articles of the company, or where default is made in relation to a private company in complying with a prohibition of a kind specified in paragraph (a) of subsection (1) of section 38 of the repealed Act that is included in the memorandum or articles of the company, the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty : Five hundred pounds.

**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

Alterations  
of objects in  
memo-  
randum.

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.

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 to all members, and to all trustees for debenture holders and if there are no trustees for any 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 subsection (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 shall 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 was 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 or of any 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 Act, 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 any application to the Court has been made, before the application has been determined by the Court (whichever is the later).

(9) A copy of the resolution (together with notice thereof in the prescribed form) shall be lodged with the Registrar by the company within fourteen days after the expiration of the twenty-one days referred to in subsection (8) of this section, but if an application has been made to the Court in accordance with this section the copy and notice 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.

**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 guarantee or an unlimited company, be registered with the memorandum, articles signed by the subscribers to the memorandum prescribing regulations for the company.

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.

(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 must 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 or 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 subsection (4) of this 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 of the increase.

(6) Every company which makes default in complying with subsection (5) of this section and every officer of the company who is in default in complying with that subsection shall be guilty of an offence against this Act.

Penalty : Fifty pounds. Default penalty.

## PART III.

## DIVISION II.

Adoption of  
Table A or B  
of Fourth  
Schedule.

U.K. s. 8.  
N.S.W.  
ss. 18, 44.  
Vic. s. 25.  
Qsld. s. 20.  
S.A. ss. 18, 19.  
W.A. ss. 19,  
20.  
Tas. s. 25.

Table B.

Alteration of  
articles.

U.K. s. 10.  
N.S.W. s. 20.  
Vic. s. 26.  
Qsld. s. 22.  
S.A. s. 21.  
W.A. s. 22.  
Tas. s. 26.

As to memo-  
randum and  
articles of  
companies  
limited by  
guarantee.

U.K. s. 21.  
N.S.W. s. 23.  
Qsld. s. 33.  
Vic. s. 27.  
S.A. s. 31.  
Tas. s. 27.

**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 Act, 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 Act, 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.

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

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

(3) Subject to this section, any company shall have 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 therein, without being required in the special resolution effecting the amendment to set out the text of the regulations so adopted.

**32.** (1) In the case of a company limited by guarantee and not having a share capital and registered after the first day of March one thousand nine hundred and thirty-five, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.

s. 31. In *re* ADELAIDE, UNLEY, AND MITCHAM TRAMWAY Co., LTD., in liquidation (1907) S.A.L.R. 35; 3 Austn. Digest 614. Held, that alterations made to the articles of association for the purpose of providing that in winding up, the surplus assets should be distributed on the basis of the amounts subscribed by shareholders instead of the number of shares held, were valid.

(2) For the purposes of the provisions of this Act 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 aforesaid 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.

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

Effect of memorandum and articles.

U.K. ss. 20, 22.  
N.S.W. ss. 22, 24.  
Vic. s. 28.  
Qsld. ss. 32, 34.  
S.A. ss. 30, 32.  
W.A. ss. 31, 32.  
Tas. s. 28.

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

(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, shall be 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.

As to effect of alterations on members who do not consent.

- s. 33. *AYERS v. SOUTH AUSTRALIAN BANKING CO.* (1871) L.R. 3 P.C. 548; 7 Moo P.C. (N.S.) 432; 40 L.J.P.C. 22; 19 W.R. 860; 17 E.R. 163; 3 Austn. Digest 584. A clause in the charter of a company forbidding it to lend money on the security of merchandise, does not prevent property in goods on land passing under an instrument which would in ordinary circumstances pass it.
- BANK OF SOUTH AUSTRALIA v. ABRAHAMS* (1875) L.R. 6 P.C. 265; 44 L.J.P.C. 76; 32 L.T. 277; 23 W.R. 668; 9 S.A.L.R. 246; 3 Austn. Digest 859. A power in the deed of settlement of a company authorizing the directors to mortgage or charge the property of the company does not authorize them to mortgage or charge future calls.
- Re DEVON CONSOLS MINING COMPANY LIMITED; Ex parte WOOD* (1878) 12 S.A.L.R. 167; 3 Austn. Digest 606; affirmed by *DEVON CONSOLS MINING CO. v. WOOD* (1879) 13 S.A.L.R. 40; 3 Austn. Digest 729. A company cannot alter the provisions of its memorandum as to capital except in manner prescribed by the Act. Provisions in the articles inconsistent with the memorandum are void.
- ACRAMAN v. SOUTH AUSTRALIAN GAS COMPANY* (1910) S.A.L.R. 59; 16 A.L.R. (C.N.) 5; 3 Austn. Digest 723. Unless the constitution of a company so provides or the shareholder consents, a dividend can only be forwarded by post in the form of a dividend warrant, at the risk of the company.
- STUART v. STOCK EXCHANGE OF ADELAIDE LIMITED* (1914) S.A.L.R. 120; 3 Austn. Digest 745. A provision in the articles of a company that the share of a member is to be forfeited on his insolvency is void as a fraud on the insolvency law.
- In re F. H. RING & CO. LIMITED* (1924) S.A.S.R. 138; 3 Austn. Digest 643. Observations as to the basis of membership of a company.

## PART III.

## DIVISION II.

## 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, 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 146 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 every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty: Ten pounds.

## Form of contracts.

U.K.

ss. 32-36.

N.S.W.

ss. 348, 351,

352.

Vic. s. 30.

Qld. ss. 41,

43-45.

S.A. ss. 44,

46-48.

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 any 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 any person acting under its authority express or implied,

and any contract so made shall be effectual in law and shall bind 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.

PART III.  
DIVISION II.

(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.

Authenti-  
cation of  
documents.

(3) A company may, by writing under its common seal, empower any person, either generally or in respect of any 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 subsection (5) of this section, under the appropriate official seal of the company shall bind the company and have the same effect as if it were under its common seal.

Execution  
of deeds.

(4) The authority of any such agent or attorney shall, as between the company and any person dealing with him, continue during the period (if any) mentioned in the instrument conferring the authority, or if no period is there 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 State may, if authorized by its articles, have for use in any place outside the State an official seal, which shall be a facsimile of the common seal of the company with the addition on its face of the name of every 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.

Official seal for  
use abroad.

**36.** If at any time the number of members of a company is reduced, in the case of a proprietary company or a private company (other than a proprietary company or private company the whole of the issued shares of which are held by a holding company that is a public company under this Act or under the law of any other State or Territory of the Commonwealth), below two, or in the case of any company other than a proprietary company or a private company, below five, and it carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognizant of the fact that it is carrying on business with fewer than two or five members (as the case may be) shall be 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 every such member shall be guilty of an offence against this Act if the company so carries on business after those six months.

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

Penalty : Fifty pounds. Default penalty.

PART IV.  
DIVISION I.

PART IV.  
SHARES, DEBENTURES AND CHARGES.

DIVISION I.—PROSPECTUSES.

Requirement to issue form of application for shares or debentures with a prospectus.

U.K. s. 38 (3),  
(5).  
N.S.W. s. 137.  
Vic. s. 32.  
Qld. ss. 46, 47.  
S.A. ss. 50(3),  
366.  
W.A. s. 47.  
Tas. s. 31.

**37.** (1) A person shall not issue, circulate or distribute any form of application for shares in or debentures of a corporation or proposed 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) Subsection (1) of this section shall not apply if the form of application is issued, circulated or distributed in connection with shares or debentures which are not offered to the public but otherwise that subsection shall apply to any such form of application whether issued, circulated or distributed on or with reference to the formation of a corporation or subsequently.

As to invitations to the public to deposit money with companies.

Vic. s. 36.  
N.S.W. s. 137A.  
Qld. s. 47A.  
Tas. s. 35.

**38.** (1) No invitation to the public to deposit money with, or to lend money to, any corporation shall be made unless a debenture is intended to be issued in respect of every such deposit or loan and a debenture shall as soon as practicable be issued in respect of every such deposit or loan.

(2) Where an invitation is made to the public to deposit money with or lend money to any 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 any 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 shall apply to a prescribed corporation and nothing in this Act shall require a prospectus to be issued in connection with any invitation to the public to deposit money with a prescribed corporation.

(5) In subsection (4) of this section, "prescribed corporation" means—

(a) a banking corporation ;

(b) a corporation that is declared by the Governor by notice in the *Government 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 11 of the *Banking Act* 1959 of the Commonwealth, or that Act as amended from time to time, is in force ; or

(ii) is registered under a law of the Commonwealth relating to life insurance or is a corporation the whole of the issued shares of which are held beneficially by a corporation so registered ; or

(iii) is a subsidiary of a banking corporation or of a pastoral company referred to in subparagraph (i) of this paragraph, the whole of the issued shares of which subsidiary are held beneficially by the banking corporation or the pastoral company, as the case may be, and the repayment of all existing and future deposits with and loans to which subsidiary are guaranteed by the banking corporation or pastoral company,

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

(6) The Governor may, by notice in the *Government Gazette*—

(a) specify terms and conditions subject to which subsection (4) of this section shall have effect in relation to a corporation specified in paragraph (c) of subsection (5) of this section ; or

(b) vary or revoke any declaration or specification made under this section.

(7) Every corporation which contravenes this section and every officer of a corporation who is in default under this section shall be guilty of an offence against this Act.

Penalty : One thousand pounds.

39. (1) To comply with the requirements of this Act 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 State, certifies in writing, that the type and size of letters are legible and satisfactory ;

Contents of  
prospectuses.  
Fifth  
Schedule.  
U.K. ss. 37, 38.  
N.S.W.  
ss. 136-137.  
Vic. ss. 37,  
303 (1).  
Qld. ss. 46, 47.  
S.A. ss. 49,  
50 (4), (5), 367.  
W.A. ss. 46-47  
Tas. s. 36.

- (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 Act 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 paragraph 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 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 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, in addition, 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 State 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 State and, if so, the address of its principal office in the State.

(2) Sub-paragraphs (i), (ii) and (iii) of paragraph (1) subsection (1) of this section shall 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 subsection, paragraph 2 of that Part of that Schedule shall have 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 shall be 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 Act, each director of the corporation and other person responsible for the prospectus shall be guilty of an offence against this Act.

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 shall not incur any liability by reason of the non-compliance or contravention, if—

- (a) as regards any matter not disclosed, he proves that he was not 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 paragraph 17 of the Fifth Schedule no director or other person shall incur any liability in respect of the failure unless it is proved that he had knowledge of the matters not disclosed.

(7) Nothing in this section shall limit or diminish any liability which any person may incur under any rule of law or any enactment or under this Act apart from subsection (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).  
Qsld. s. 47C.  
Tas. s. 36 (6).  
Cf. S.A. s. 51.

**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 the following :—

- (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 ; and
- (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) No statement that, or to the effect that, the advertisement is not a prospectus shall affect the operation of this section.

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

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

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 ; and

(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 subsection (1) of this section,

the corporation and each person who signed the certificate shall be deemed to be the persons who published or disseminated the advertisement and who knowingly authorized or permitted its publication or dissemination, but no other person shall be deemed to be such a person.

(6) Any person who has obtained a certificate referred to in paragraph (b) of subsection (5) of this section shall, when so requested by the Registrar, forthwith deliver the certificate to the Registrar.

Penalty : Five hundred pounds. Default penalty.

(7) Nothing in this section shall limit or diminish any liability which any person may incur under any rule of law or under any provision of this Act apart from this section.

(8) It shall be a defence to any charge brought under subsection (4) of this section if the defendant proves that he did not know, and that by the exercise of reasonable diligence he could not become aware, that the advertisement concerned did not comply with the requirements of this Act as to prospectuses.

(9) Proceedings for any offence against this section shall not be taken without the written consent of the Minister.

## PART IV.

## DIVISION I.

As to retention  
of over-  
subscriptions  
in debenture  
issues.

**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.

As to state-  
ment of asset-  
backing.

(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.

(3) If default is made in complying with any provision of this section, the corporation and every officer of the corporation who is in default shall be guilty of an offence against this Act. Penalty : One thousand pounds.

Registration  
of prospectus.  
U.K. s. 41.  
N.S.W. s. 136.  
Vic. s. 38.  
Qld. s. 46.  
S.A. s. 49.  
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 any 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 Act or the Registrar is satisfied, if the corporation is a foreign company incorporated in another State or Territory of the Commonwealth, that—

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

(ii) the prospectus complies with the requirements of paragraph (i) of subsection (1) of section 39 ; and

(c) there are also lodged with the Registrar copies verified as prescribed of any consents required by section 45 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.

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

Penalty : Two hundred and fifty pounds.

(4) Every corporation shall cause a true copy of every document referred to in paragraph (c) of subsection (2) of this section to be deposited within seven days after registration of the prospectus at the registered office of the corporation in the State and if it has no registered office in the State at the address in the State 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.

Copy of contracts, etc., to be kept for inspection at registered office.

**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.

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

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

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

PART IV.  
DIVISION I.

(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 shall 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 shall be sufficient if the document referred to in subsection (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 in or debentures of a corporation 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 shall, subject to subsection (3) of this section, whenever made, be 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 the permission has not been applied for, or has not been granted as aforesaid, the corporation shall, subject to subsection (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 shall be jointly and severally liable to repay that money with interest at the rate of five per centum per annum from the expiration of such fourteen days.

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

- (a) permission is not applied for as specified in paragraph (a) of subsection (1) of this section ; or
- (b) permission is not granted as specified in paragraph (b) of that subsection,

the Minister may by notice published in the *Government Gazette* on the application of the corporation, made before any share or debenture purports to be allotted, exempt the allotment of the shares or debentures from the operation of this section.

(4) A director shall not be liable under subsection (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 shall be void.

(6) Without limiting the application of any of its provisions, this section shall have 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 subsection (2) of this section to repay money received from applicants, and references to the corporation's liability under that subsection were construed accordingly ; and
  - (iii) for the reference in subsection (7) of this 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 subsection (2) of this section; and if default is made in complying with this subsection, the corporation and every officer of the corporation who is in default shall be guilty of an offence against this Act.

Penalty : Five hundred pounds.

(8) Where the Stock Exchange has, within the period of six weeks referred to in paragraph (b) of subsection (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 those requirements, but, if any such undertaking is not complied with (except in relation to any requirement of the Stock Exchange made after the undertaking was given), each director who is in default shall be guilty of an offence against this Act. Penalty : Imprisonment for three months or five hundred pounds.

(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 such permission has been granted or that such application has been made to the Stock Exchange or will be made to the Stock Exchange within three days of the issue of the prospectus.

Penalty : Imprisonment for six months or five hundred pounds.

(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.

**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—

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

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

- (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 any prospectus is issued in contravention of this section the corporation and every person who is knowingly a party to the issue thereof shall be guilty of an offence against this Act.

Penalty : Five hundred pounds.

**46.** (1) Subject to this section, each of the following persons shall be 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—

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.

- (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 in subsection (1) of this section, where the consent of an expert is required to the issue of a prospectus and he has given that consent, he shall not, by reason only thereof, be 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

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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) No person shall be liable under subsection (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 became 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 45 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) Subsection (3) of this section shall not apply in the case of a person liable, by reason of his having given a consent required of him by section 45, 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 subsection, would under subsection (1) of this section be liable, by reason of his having given a consent required of him by section 45, 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 shall not be so liable if he proves—

- (a) that, having given his consent under section 45 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 45 to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus,

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the directors of the corporation, except any without whose knowledge or consent the prospectus was issued, and any other person who authorized or caused the issue thereof shall be 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 any untrue statement or wilful non-disclosure, any person who authorized or caused the issue of the prospectus shall be guilty of an offence against this Act 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: Imprisonment for one year or one thousand pounds 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 II.

## DIVISION II.—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) No allotment shall be made of any shares of 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, and 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, except in the case of a no-liability company, shall 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 subsection (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 shall be jointly and severally liable to repay that money with interest at the rate of five per centum per annum from the expiration of the period of five months, but a director shall not be 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 subsection (1) of section 50 shall be 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 shall be so voidable notwithstanding that the company is in course of being wound up.

(6) Every director of a company who knowingly contravenes or permits or authorizes the contravention of any of the provisions of this section or of subsection (1) of section 50 shall be guilty of an offence against this Act and shall be liable, in addition to the penalty or punishment for the offence, 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 shall be void.

(8) No company shall allot, and no officer or promoter of a company or a proposed company shall authorize or permit to

PART IV.  
DIVISION II.

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 shall not, by reason only of that fact, be voidable or void.

Application  
moneys to be  
held in trust  
until allot-  
ment.

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 every officer of the company in default or, in the case of an intended company, every person named in the prospectus as a proposed director and every promoter who knowingly and wilfully authorizes or permits the default shall be guilty of an offence against this Act.

Penalty : Five hundred pounds.

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.

**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.

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

Penalty : Five hundred pounds.

Requirements  
as to state-  
ments in lieu  
of prospectus.

U.K. s. 48.  
Vic. s. 44.  
Qld. s. 52.  
S.A. 3rd, 4th  
Schedule.  
Tas. s. 43.

**51.** (1) To comply with the requirements of this Act 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 paragraph 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.

(2) The Registrar shall not register any statement in lieu of prospectus unless it appears to him to comply with the requirements of this Act.

(3) Where, in any statement in lieu of prospectus, there is any untrue statement or wilful non-disclosure, any director who signed the statement in lieu of prospectus shall be guilty of an offence against this Act 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 : Imprisonment for one year or five hundred pounds or both.

**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

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.

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 Act ;

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

(c) there has been 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 subsection has been complied with.

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

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

(5) 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 any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall be guilty of an offence against this Act.

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.

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DIVISION II.  
Restriction on varying contracts referred to in prospectus, etc.  
U.K. s. 42.  
N.S.W. s. 139.  
Vic. s. 45.  
Qsld. s. 48.  
S.A. s. 52.  
W.A. s. 49.  
Tas. s. 44.

#### DIVISION III.—SHARES.

**54.** (1) Where a company makes any allotment of its shares or any of its shares are deemed to have been allotted under subsection (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—

DIVISION III.  
Return as to allotments.  
U.K. s. 52.  
N.S.W. s. 145.  
Vic. s. 46.  
Qsld. 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 subsection (2) of this 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 subsection (1) of this 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 subsection (1) of section 160 apply has allotted shares—
  - (i) for cash ; or

- s. 54. *MALTHOUSE V. ADELAIDE MILK SUPPLY CO-OPERATIVE LIMITED* (1922) S.A.S.R. 572; 3 Austn. Digest 651. Held on the facts that a contract had been concluded between the company and the shareholder for the issue of shares and for payment in cash of the amount due on shares. Nature of cash payment discussed.
- In *re* *F. H. RING & Co. LIMITED* (1924) S.A.S.R. 138; 3 Austn. Digest 1008, 1135. Held that neither the memorandum nor articles of a company formed by way of reconstructing an old company provided that shares in the new company should be held otherwise than on payment of the whole amount thereof in cash.
- In *re* *GOODMAN BROTHERS AUTO AND SERVICE COMPANY LIMITED; Ex parte F. W. ROSE* (1927) S.A.S.R. 571; 3 Austn. Digest 668. An agreement between the company and the shareholder held to be an agreement that shares should be paid for in land.
- In *re* *CAMERON SHOE COMPANY LIMITED—TAYLOR'S CASE* (1928) S.A.S.R. 408; 3 Austn. Digest 665. Where the company bought a house from a shareholder at an agreed price and credited the amount due to the shareholder as payment of the amount unpaid on his shares, held that the shareholder had paid in cash for his shares.
- In *re* *FEDERAL TRADERS LIMITED* (1934) S.A.S.R. 174. Held that shares allotted to brokers in payment of brokerage had not been paid for in cash.

(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 certified as prescribed.

(4) If a certified copy of a contract is lodged, the original contract duly stamped shall, if the Registrar so requests, be produced 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, or in pursuance of the application of moneys held by the company in an account or reserve in paying up unissued shares to which the share holders have become entitled,

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 every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty: Two hundred pounds. Default penalty: Fifty pounds.

Shares issued prior to repealed Act for consideration other than cash.  
S.A. s. 59 (3).

(8) Where shares in any company other than a no-liability company were issued prior to the commencement of the repealed Act as fully or partly paid up for a consideration other than cash, but no provision relating thereto was contained in the memorandum or articles of the company and no contract was filed as provided by section 25 of The Companies Act, 1892, as then in force, then if the shares—

- (a) were allotted and taken in good faith not later than a date six years prior to the commencement of the repealed Act ; or
- (b) were allotted and taken in good faith and for a substantial consideration ; or

- (c) after the allotment thereof, were acquired by any person in good faith without notice of the omission as aforesaid,

the allottee or holder of such shares shall not be liable to pay to the company in respect of such shares any sum other than the difference between the nominal amount of the shares and the respective amounts paid up in cash or treated or deemed to have been so paid up thereon.

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

- (a) make arrangements on the issue of shares for varying the amounts and times of payment 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.

Differences in calls and payments, etc.  
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.

**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.

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.

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

Share warrants.  
N.S.W. s. 80.  
Vic. s. 47.  
Tas. s. 46.  
Cf. S.A. ss. 92, 121, Vic. (1938) s. 97.

(2) The bearer of a share warrant issued before the commencement of this Act shall be entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members.

(3) A company shall be responsible for any loss incurred by any person by reason of the company entering in the register the name of a bearer of a share warrant issued by it before the commencement of this Act in respect of the shares therein specified without the warrant being surrendered and cancelled.

(4) Subject to this Act, the bearer of a share warrant issued by a company before the commencement of this Act may, if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Act either to the full extent or for any purpose defined in the articles.

## PART IV.

## DIVISION III.

Power to pay certain commissions, and prohibition of payment of all other commissions, discounts, etc.

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 subsection (1) of this section, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares 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 shall affect the power of any company to pay such brokerage (in addition to or in lieu of the commission referred to in subsection (1) of this section) as

**s. 58. In re THE IVANHOE SOUTH EXTENDED GOLD MINING COMPANY (1900) S.A.L.R. 53.** Held, that a clause in the articles of association, providing that surplus assets in a winding-up should be distributed in proportion to the nominal amount of shares of the members, was valid whether the shares were issued at a discount or not.

**FRASER'S SOUTH GOLD MINING COMPANY (1900) S.A.L.R. 56.** Held, that a no-liability company under the Mining Companies Act, 1881, had no power to issue shares at a discount.

it has before the commencement of this Act been 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 shall have power to apply any part of the money or shares so received in payment of any commission the payment of which if made directly by the company would have been lawful under this section.

(5) If default is made in complying with any provision of this section requiring the lodging with the Registrar of the statement in the prescribed form, the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty : Fifty pounds. Default penalty.

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

(3) Every 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.

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.

(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 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 every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty: Fifty pounds. Default penalty.

(8) This section shall 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 called the "share premium account", and the provisions of this Act relating to the reduction of the share capital of a company shall, subject to this section, apply 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 the case of a company which carries on life insurance business in the Commonwealth, by appropriation or transfer to any statutory fund established and maintained pursuant to any law of the Commonwealth relating to life insurance;

(e) 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; or

(f) in providing for the premium payable on redemption of debentures or redeemable preference shares.

(3) Where a company has before the commencement of this Act issued any shares at a premium the provisions of this section

shall apply as if those shares had been issued after the commencement of this Act but, where any part of the premiums has been so applied that it does not at the commencement of this Act form an identifiable part of the company's reserves, it shall be disregarded in determining the sum to be transferred to the share premium account.

**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 and the redemption shall be effected only on such terms and in such manner as is provided by the articles.

Redeemable preference shares.  
U.K. s. 68.  
N.S.W. ss. 149  
154.  
Vic. s. 61.  
Qsld. s. 58.  
S.A. s. 63.  
W.A. s. 60.  
Tas. s. 50.

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

(6) Where in pursuance of this section a company has redeemed or is about to redeem 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 accordingly the share capital of the company shall not, for the purposes of any fee under this Act, be deemed to be increased by such issue but, where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to any fee under this Act, be deemed to have been issued in pursuance of this subsection unless the old shares have been 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.

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## DIVISION III.

(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, if so authorized by its articles, may 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 or make provision for the conversion of all or any of its paid up shares into stock and re-convert or make provision for the re-conversion of that stock into paid up shares of any denomination ;
- (d) subdivide its shares or any of them into shares of smaller amount than is fixed by the memorandum, so however that in the subdivision the proportion between the amount paid and the amount (if any) unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived ;
- (e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person or which have been forfeited and diminish the amount of its share capital by the amount of the shares so cancelled.

Cancellations.

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

As to share capital of unlimited company on re-registration.

(3) An unlimited company having a share capital may by any resolution passed for the purposes of subsection (1) of section 25—

- (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

s. 62. WINN'S GOLD MINING COMPANY (NORTHERN TERRITORY) LIMITED v. WYLD (1874) 8 S.A.L.R. 66; 3 Austn. Digest 738. Held (under section 33 of the Companies Act, 1864), that the requirement as to notice is directory only, and that notice was not a condition precedent to bringing an action for calls subsequently made.

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 or converted any of its shares into stock or re-converted stock into shares, it shall within fourteen days after the passing of the resolution authorizing the increase or after the conversion or re-conversion, as the case may be, lodge with the Registrar notice in the prescribed form of the increase, conversion or re-conversion.

Notice of increase of share capital.

(5) If any company fails to comply with the provisions of subsection (4) of this section, the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty: Fifty pounds. Default penalty.

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

Validation of shares improperly issued.

**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:—

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.

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

- s. 64. In *re* ADELAIDE MORTGAGE AND INVESTMENT COMPANY LIMITED (1928) S.A.S.R. 478; 3 Austn. Digest 634. Unopposed petition for confirmation of reduction of capital granted, although it appeared that one of the objects of the petition was to free the promoters from a possible liability on shares. Confirmation ordered on condition that words "and reduced" be added to title of company, and information as to reasons for reduction published.
- In *re* COLTON, PALMER AND PRESTON LIMITED (1936) S.A.S.R. 434. Where under a scheme for reduction of capital a bank undertook to discharge all debts of the company, held that this was a special circumstances justifying the exercise of the jurisdiction by the bank under section 76 (2) of the Companies Act, 1934.
- In the matter of SOUTHERN ACCEPTANCE CORPORATION LTD. (1945) S.A.S.R. 124. A resolution to repay the shareholders an amount per share on the footing that it may be called up again at any time held to effect a "reduction of share capital" within the meaning of section 74 of the Companies Act, 1934.

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

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

and may, so far as 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, shall be 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 subsection (2) of this section the Court may, having regard to any special circumstances of any case, direct that all or any of the provisions of that subsection shall not apply as regards any class of creditors.

(4) The Court, if satisfied with respect to every creditor who, under subsection (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 or 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 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 subsection (4) of this 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 shall be conclusive evidence that the requirements of this Act with respect to reduction of share capital have been complied with and that the share capital of the company is such as is stated in the order.

(8) On the lodging of the copy of the order, the particulars shown in the order pursuant to subsection (5) of this section shall be deemed to be substituted for the corresponding particulars in the memorandum and such substitution and any addition ordered by the Court to be made to the name of the company shall (in the case of any addition to the name, 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 Act.

(9) A member, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount of the share as fixed by the 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 Act 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 shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before 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 subsection shall affect the rights of the contributories among themselves.

(10) Every officer of the company who—

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

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

(c) aids, abets or is privy to any such concealment or misrepresentation,

shall be guilty of an offence against this Act punishable on indictment.

Penalty : Imprisonment for three years.

(11) This section shall not apply to an unlimited company, but nothing in this Act shall preclude 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. 104.  
Vic. s. 54.  
Qsld. s. 78.  
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, 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 in pursuance of the said 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 shall not be 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 every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty : One hundred pounds. Default penalty.

(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.

**66.** (1) No company shall 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.

Rights of holders of preference shares to be set out in memorandum or articles.  
Vic. s. 55.  
Tas. s. 54.

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

Penalty : One hundred pounds.

Dealing by a  
company in its  
own shares,  
etc.

U.K. s. 54.  
N.S.W. s. 142.  
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 Act, no company shall give, whether directly or indirectly and whether by means of a loan or guarantee or the provision of security or otherwise, any financial assistance for the purpose of or in connection 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 in any way purchase, deal in or lend money on its own shares.

(2) Nothing in subsection (1) of this section shall prohibit—

- (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 every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty : Imprisonment for three months or five hundred pounds.

Options  
over unissued  
shares.

68. (1) An option granted after the commencement of this Act by a public company 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 shall be void.

(2) Subsection (1) of this section shall 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.

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**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 in no case extending 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.

Power of company to pay interest out of capital in certain cases.  
 U.K. s. 65.  
 N.S.W. s. 157.  
 Vic. s. 57.  
 Qsld. s. 66.  
 S.A. s. 71.  
 W.A. s. 68.  
 Tas. s. 56.

## DIVISION IV.—DEBENTURES.

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**70.** (1) Every 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 State.

(2) Every 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

Register of debenture holders and copies of trust deed.  
 U.K. s. 87.  
 N.S.W. s. 169.  
 Vic. s. 58.  
 Qsld. s. 97.  
 S.A. s. 94.  
 W.A. s. 90.  
 Tas. s. 57.

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securing the debentures, during such periods (not exceeding in the aggregate thirty days in any calendar year) as is therein specified.

(5) Every registered holder of debentures and every holder of shares in a company shall at his request be supplied by the company with 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 less 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 (but not longer than thirty days) after a request has been made pursuant to this section, the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty : Fifty pounds. Default penalty.

(8) Where, on the date of commencement of this Act, 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 subsection (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 Act, shall not be 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.

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**73.** (1) Where a company has redeemed any debentures, whether before or after the commencement of this Act—

- (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 subsection, whether the re-issue or issue was made before or after the commencement of this Act, 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 shall have and shall be deemed always to have had the same priorities as if the debentures had never been redeemed.

(3) Where a company has either before or after the commencement of this Act 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.

**74.** (1) Every corporation offering debentures to the public for subscription in the State 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 a prescribed proprietary company or a prescribed private company as defined in section 397 ; or
- (b) a foreign company incorporated in any 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 ; or
- (c) a person who is a registered liquidator,

as trustee for the holders of the debentures.

(2) A corporation shall not allot any of the debentures until the appointment provided for in the debentures or in the trust deed pursuant to subsection (1) of this 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—

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.

Trustees for debenture holders.

N.S.W. s. 172A.  
Vic. s. 62.  
Qld. s. 100A.  
Tas. s. 61.

- (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 holders of debentures ; and
  - (ii) by an advertisement in a daily newspaper circulating generally throughout the State 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 Act does not expressly contain the covenants referred to in subsection (3) of this section the corporation and every officer of the corporation who is in default shall be guilty of an offence against this Act.

Penalty : One hundred pounds.

(5) Without leave of the Court, a person, 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 subsection (1) of this section if that person, company or foreign company is—

- (a) a director or an auditor of the corporation ;
- (b) a shareholder that holds his or its shares in the corporation beneficially ;
- (c) a creditor of the corporation ;
- (d) a person or 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 or director of a corporation that is by virtue of subsection (5) of section 6 deemed to be related to—
  - (i) any company or foreign company referred to in paragraphs (a) to (d) inclusive of this subsection ; or
  - (ii) the corporation referred to in subsection (1) of this section.

(6) Notwithstanding anything contained in subsection (5) of this section, that subsection shall not prevent a corporation (in this subsection referred to as “the trustee corporation”) that is (or by virtue of subsection (5) of section 6 is deemed to be related to)—

- (a) a banking corporation ;
- (b) a corporation authorized to transact life insurance business under the law of the Commonwealth relating to life insurance ; 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—

- (i) the other corporation owes to the trustee corporation or to a corporation that is deemed by virtue of subsection (5) of section 6 to be related to the trustee corporation any moneys so long as such moneys are—

- (A) moneys that (not taking into account any moneys referred to in subparagraphs (B) and (C) of this paragraph) do not at the time of the appointment or at any time within a period of three months after the debentures are first offered to the public, exceed one-tenth of the amount of the

debentures proposed to be offered to the public within that period, and do not, at any time after the expiration of that period, exceed one-tenth of the amount owed by the other corporation to the holders of the debentures ;

(B) 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

(C) 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

(ii) the trustee corporation, or a corporation that is deemed by virtue of subsection (5) of section 6 to be related to the trustee corporation, is a shareholder of the other corporation in respect of shares that it holds beneficially, so long as the shares in the corporation held beneficially by the trustee corporation and by all other corporations that are deemed by virtue of subsection (5) of section 6 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 subsection (5) of this section shall affect the operation of any debentures or trust deed issued or executed before the commencement of this Act or apply to the trustee for the holders of any such debentures except in a case where, pursuant to any such trust deed, a further offer of debentures is made to the public after the commencement of this Act.

(8) A corporation referred to in subsection (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 (to be held and conducted in such manner as the Court thinks fit, under the chairmanship of a person nominated by the trustee or such other person as the meeting appoints) of the holders of debentures of any class to be called to consider any matters in which they are concerned and advise the trustee thereon and may give such ancillary or consequential directions as it thinks fit.

(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 a debenture holder (where there is no trustee for debenture holders) or the trustee, the Court is satisfied that—

Enforceability  
of certain  
debentures.

- (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) Subsection (11) of this section shall 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.

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(13) Subject to the Administration and Probate Act, 1919, as amended, the Public Trustee may be appointed the trustee for debenture holders under and for the purposes of this section.

(14) Where a trustee for the holders of debentures of a corporation, having been appointed pursuant to this section, ceases to hold office as such, the corporation shall—

(a) if provision has been made in the debentures or the relevant trust deed for the appointment of a successor to the trustee, and for that successor to be a company, foreign company or registered liquidator qualified for appointment under this section as trustee for the holders of the debentures—take such steps and do such things as may be necessary for the appointment of a successor accordingly; or

(b) if no such provision has been so made—forthwith appoint, as successor to that trustee, a company, foreign company or registered liquidator qualified for appointment under this section as trustee for the holders of the debentures,

and the successor, when so appointed shall, for the purposes of this section, be deemed to be the trustee for the holders of the debentures, and the provisions of this section applying to and in relation to a trustee shall apply likewise to and in relation to the successor.

(15) If default is made in complying with any provision of this section, other than the provisions of subsection (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 subsection (3) of this section, the corporation and every officer of the corporation who is in default shall be guilty of an offence against this Act.

Penalty: Two hundred pounds. Default penalty.

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, shall be void in so far as it would have the effect of exempting a trustee thereof from or indemnifying the trustee against liability for breach of trust where the trustee fails to show the degree of care and diligence required of the trustee as such, having regard to the provisions of the trust deed or contract conferring on the trustee any powers, authorities or discretions.

(2) Subsection (1) of this section shall 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 the trustee ceasing to act.
- (3) Subsection (1) of this section shall not operate—
- (a) to invalidate any provision in force at the commencement of this Act 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 V.—INTERESTS OTHER THAN SHARES,  
DEBENTURES, ETC.

DIVISION V.

**76.** (1) In this Division and in the Seventh Schedule, unless inconsistent with the context or subject matter—

Interpretation.  
N.S.W. s. 173A  
Vic. s. 83.  
Qld. s. 83A.  
S.A. s. 114A.  
W.A. s. 98A.  
Tas. s. 82.

“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 this State :

“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 State or elsewhere ;

(b) in any common enterprise, whether in the State 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—

- (i) any share in or debenture of a corporation ;
- (ii) any interest in or arising out of a policy of life insurance ; or
- (iii) 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 may at the option of the investor, 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 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.

(3) Every deed approved under the repealed Act shall be deemed to contain covenants to the effect of the covenants required to be contained in a deed under subsection (1) of section 80 except the covenants required under subparagraphs (i), (ii) and (iii) of paragraph (b) of that subsection, and subsections (2), (3), (4) and (5) of that section shall apply in relation to the deed accordingly.

Approved  
deeds.  
S.A. s. 114b.  
Qld. s. 83B.  
W.A. s. 98B.

77. For the purposes of this Division, a deed shall be an approved deed if—

- (a) the Registrar has granted his approval to the deed under this Division or under any corresponding previous enactment ; and
- (b) the Minister has granted his approval under this Division or under any corresponding previous enactment 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.

**78.** (1) Where a deed makes provision for the appointment of an approved 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.

Approval of deeds.  
S.A. s. 114c.  
Qld. s. 83c.  
W.A. s. 98c.

(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.

**79.** (1) The Minister 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.

Approval of trustees.  
N.S.W. s. 173a  
S.A. s. 114d.  
W.A. s. 98d.

(2) Where the Minister, having regard to the nature of the undertaking, scheme, enterprise, contract or arrangement to which a deed relates, is satisfied that in the special circumstances of the case it is impracticable to secure a company to act as trustee or representative for the purposes of the deed, the Minister may, subject to such terms and conditions as he thinks fit, grant his approval to such person or persons as he thinks fit acting as trustee or representative for the purposes of the deed.

(3) The Minister 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 or under any corresponding previous enactment.

**80.** (1) A deed shall, for the purposes of paragraph (a) of subsection (2) of section 78, contain covenants to the following effect, namely—

Covenants to be included in deeds.  
N.S.W. s. 173a  
S.A. s. 114e.  
Qld. s. 83e.  
W.A. s. 98e.

- (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 ;

PART IV.  
DIVISION V.

(b) covenants binding the management company—

- (i) that the management company will pay to the trustee or representative, within thirty days after their 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 the trustee or representative will—

- (i) exercise all due diligence and vigilance in carrying out the functions and duties of the trustee or representative 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 subsection (5) of section 38 to be an authorized dealer in the short term money market) which is by virtue of subsection (5) of section 6 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 the trustee or representative, 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 paragraph (h) of this subsection for the purpose of authorizing the exercise of the right at the next election ; and

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(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 circulating generally throughout the State,

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 subsection (1) of this 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 subsection (1) of this section, the trustee or representative—

(a) shall comply with the direction unless it is inconsistent with the deed or this Act; and

(b) shall not be 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 Act 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.

**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.

Interests to  
be issued by  
companies  
only.  
N.S.W. s. 173B.  
S.A. s. 114f.  
Qld. s. 83F.  
W.A. s. 98F.

**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 connection therewith which statement shall for all purposes be deemed to be a prospectus issued by a company, and subject to subsection (2) of this section, all provisions of this Act and rules of law relating to prospectuses or to the offering or to an 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.

Statement to  
be issued.  
N.S.W. s. 173C  
S.A. s. 114g.  
Qld. s. 83G.  
W.A. s. 98G.

(2) Subject to subsection (3) of this 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.

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(3) A matter or report referred to in subsection (2) of this 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.  
S.A. s. 114h.  
Qld. s. 83H.  
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.

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 IV of Part V shall so far as are applicable and with such adaptations as are necessary apply to and in relation to the register.

(3) A management company which—

- (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 provision of paragraph (a) of subsection (1) of section 85 in relation to the deed under which the interests are held unless the Governor by order published in the *Government Gazette* otherwise directs.

Returns,  
information,  
etc., relating  
to interests.  
N.S.W. s. 173G.  
S.A. s. 114j.  
Qld. s. 83J.  
W.A. s. 98J.

**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 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) Any document required to be lodged with the Registrar by the management company under subsection (1) of this section shall be signed by at least one director of the management company.

(3) A company to which subsection (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 two months after the end of the financial year, a copy of the documents which the company is required to lodge with the Registrar by virtue of paragraphs (b) to (e) (inclusive) of subsection (1) of this section.

## PART IV.

## DIVISION V.

Penalty for  
contravention  
of Division,  
etc.

N.S.W. s. 173L,  
S.A. ss. 114k,  
114l,  
Qld. ss. 83K,  
83L,  
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 : Imprisonment for twelve months or five hundred pounds.

(2) A person shall not be relieved from any liability to any holder of an interest by reason of any contravention of, or failure to comply with, a provision of this Division.

Winding up  
of schemes,  
etc.

**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 any provision of the deed, the trustee or representative shall summon a meeting of the holders.

(2) A meeting under subsection (1) of this 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 circulating generally throughout the State.

(3) The provisions of subsection (2) of section 80 shall apply to such a meeting as if the meeting were a meeting referred to in that subsection.

(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.

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DIVISION V.

**88.** (1) The Minister may, by notice published in the *Government 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, and may, by notice published in the *Government Gazette*, revoke such a notice or vary it in such manner as he thinks fit.

Power to exempt from compliance with Division and non-application of Division in certain circumstances.  
Qsld. s. 83M.  
S.A. s. 114m.  
W.A. s. 98M.

(2) This Division shall 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.

Non-application of Division to personal representatives, etc.

**89.** (1) Subject to this section, any provision contained in a deed that is or at any time has been an approved deed, or in any contract with the holders of interests to which such a deed relates, shall be void in so far as it would have the effect of exempting a trustee or representative under the deed from, or indemnifying such 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.

Liability of trustees.  
U.K. s. 88.  
S.A. s. 114n.  
Qsld. s. 83N.  
W.A. s. 98N.

(2) Subsection (1) of this section shall 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 VI.—TITLE AND TRANSFERS.

## DIVISION VI.

**90.** The shares or other interest of any member in a company shall be personal estate, transferable in the manner provided by the articles, and shall not be of the nature of real estate.

Nature of shares.  
U.K. s. 73.  
N.S.W. s. 174.  
Vic. s. 64.  
Qsld. s. 74.  
S.A. s. 83 (1).  
W.A. s. 81.  
Tas. s. 63.

## PART IV.

## DIVISION VI.

Numbering  
of shares.

U.K. s. 74.  
N.S.W. s. 174.  
Vic. s. 65.  
Qld. s. 74.  
S.A. s. 88 (2).  
W.A. s. 81.  
Tas. s. 64.

**91.** (1) Each share in a company shall be distinguished by an appropriate number.

(2) Notwithstanding subsection (1) of this 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 section 92 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. ss. 90, 177.  
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 shall be *prima facie* 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 State, 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 shall not affect the rights of any holder of shares.

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

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 Act.

## PART IV.

## DIVISION VI.

**94.** (1) Subject to subsection (2) of this 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.

**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 subsection shall 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 the share, debenture or other interest of a deceased member made by his personal representative shall, although the personal representative is not himself a member of the company, be as valid as if he had been such a member at the time of the execution of the instrument of transfer.

(3) Where the personal representative of a deceased member duly constituted as such under the law of any other State or Territory of the Commonwealth—

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.

Instrument of transfer.

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, 91.  
W.A. ss. 82, 83, 89.  
Tas. s. 66.

Transfer by personal representatives.

s. 95. ALEXANDER V. CARO (1888) 22 S.A.L.R. 134; 3 Austn. Digest 1178. Held under The Companies Act, 1864, that a transferor of shares in a limited company was entitled to be indemnified by the transferee against calls made subsequent to the transfer and while the transferor's name appeared on the register, notwithstanding that the transfer was in blank and the transferee had parted with the shares.

## PART IV.

## DIVISION VI.

- (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 State 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 subsection shall not operate so as to require the company to do any act or thing which 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 this State.

(4) Any transfer or payment made in pursuance of subsection (3) of this section, and any receipt or acknowledgment of such a payment, shall for all purposes be as valid and effectual as if the personal representative were the personal representative of the deceased member duly constituted under the law of this State.

(5) The production to a company of any document which is under the law of the State or under the law of any other State or 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

s. 96. *FAWCETT v. INGLEWOOD MINING VENTURE, LIMITED* (1872) 6 S.A.L.R. 15; 3 Austn. Digest 759. Held under the Companies Act, 1864, that *mandamus* will lie to compel a company to register a transfer of shares.

In the matter of the Companies Act, 1864, and Act No. 22 of 1870-1, and of the *BALHANNAH MINING COMPANY LIMITED* and of the petition of *W. T. DALWOOD* (1877) 11 S.A.L.R. 52; 3 Austn. Digest 765. A company is not bound to register a transfer which is not *bona fide*.

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 any person refuses or neglects to comply with a notice given under subsection (2) of this section the transferor may apply to a judge 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 *Government Gazette* and in such newspapers and at such times as the company thinks fit.

97. (1) If a company refuses to register a transfer of any shares, debentures or other interests 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.

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. 86.  
Tas. s. 68.

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

Penalty: Fifty pounds. Default penalty.

98. (1) The certification by a company of any 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.

Certification of transfers.  
U.K. s. 79.  
Vic. s. 70.  
Tas. s. 69.

(2) Where any person acts on the faith of a false certification by a company made negligently, the company shall be under the same liability to him as if the certification had been made fraudulently.

(3) Where any certification is expressed to be limited to forty-two days or any longer period from the date of certification, the company and its officers shall not in the absence of fraud be 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 any officer either of the company or of a corporation so authorized; and

(c) a certification that purports to be authenticated by a persons’s signature or initials (whether hand-written 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 connection 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 every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty : Fifty pounds. Default penalty.

Power of  
Court where  
default in  
issue of  
certificates.

(3) If any 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 VII.—REGISTRATION OF CHARGES.

#### DIVISION VII.

**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—

Registration of charges.  
U.K. s. 95.  
N.S.W. ss. 185, 192.  
Vic. s. 72.  
Qsld. ss. 84, 85.  
S.A. ss. 99, 100, 108, 109.  
Tas. s. 71.

- (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 shall, so far as any security on the company's property or undertaking is thereby conferred, be void as against the liquidator and any creditor of the company.

(2) Nothing in subsection (1) of this 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 ;

s. 100. In *re* COMMONWEALTH AGRICULTURAL SERVICE ENGINEERS LIMITED (1928) S.A.S.R. 342; 3 Austn. Digest 874. Effect of debenture covering assets of company in another State and registered in South Australia, but not in the other State, considered.

In *re* W. F. LE CORNU LIMITED—THE LIQUIDATOR *v.* FEDERAL TRADERS LIMITED AND OTHERS (1931) S.A.S.R. 425; 1 Austn. Digest 1107, 1114, 1125; 3 Austn. Digest 870; 10 Austn. Digest 245. An assignment by the company (by way of security) of goods let out by the company on hire purchase and in the possession of the hire-purchasers held to be an instrument which if executed by an individual would require registration as a bill of sale. An assignment by the company of the moneys owing and accruing due to it under hire-purchase agreements held to be an assignment of book debts.

In *re* FADA (AUSTRALIA) LIMITED (1932) S.A.S.R. 134; 1 Austn. Digest 1119, 1182; 3 Austn. Digest 873. An agreement to indorse and pledge documents of title to goods as security for a loan, held not to be a document which would require registration as a bill of sale.

In *re* LAWSON CONSTRUCTIONS (PTY.) LIMITED (1942) S.A.S.R. 201. Held that as a transaction was an assignment and not a hypothecation it was not void for want of registration under section 100 of the Companies Act, 1934.

- (b) a charge on uncalled share capital of a company ;
- (c) a charge or an assignment created or evidenced by an instrument which, if executed by an individual, would be invalid or of limited effect if not filed or registered under—
  - (i) The Bills of Sale Act, 1886, as amended ;
  - (ii) the Liens on Fruit Act, 1923, as amended ; or
  - (iii) the Stock Mortgages and Wool Liens Act, 1924, as amended ;
- (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) subject to any law of the Commonwealth, 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 State affects property outside the State, 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 subsection (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 shall be sufficient if there are 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 trustee (if any) for the debenture holders,

together with—

- (e) the instrument containing the charge ; or

- (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 subsection (5) of this 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 shall 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, whether absolutely or conditionally, subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions, whether 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 shall 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 subsection (7) of this section be treated as the issue of the debentures at a discount.

(9) Notwithstanding anything in any other Act, a charge requiring registration under this section need not be filed or registered and shall not be subject to avoidance under The Bills of Sale Act, 1886, as amended, the Liens on Fruit Act, 1923, as amended, or the Stock Mortgages and Wool Liens Act, 1924, as amended, and upon registration under this Division such a charge which, but for this subsection, would need to be filed or registered under any of those Acts, shall for all purposes have effect and be as valid and effectual as if it had been duly filed or registered thereunder.

(10) Where a charge requiring registration under this section is created before the lapse of thirty days after the creation of a prior unregistered charge, and comprises all or any part of the property comprised in the prior charge, and the subsequent charge is given as a security for the same debt as is secured by the prior charge, or 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.

## PART IV.

## DIVISION VII.

## Duty to register charges.

U.K. s. 96.  
N.S.W. s. 186.  
Vic. s. 73.  
Qsld. s. 85 (6).  
S.A. s. 101.  
Tas. s. 72.

**101.** (1) Documents and particulars required to be lodged for registration in accordance with section 100 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 every officer of the company who is in default shall be guilty of an offence against this Act. Penalty: Fifty pounds. Default penalty.

(2) Where registration is effected by some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him on the registration.

## Duty of company to register charges existing on property acquired.

U.K. s. 97.  
Vic. s. 74.  
Qsld. 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 this State and has, prior to such registration, created a charge which, if it had been created by the company while it was registered in the State, would have been required to be registered under this Division; or
- (c) a foreign company becomes registered in this State 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 State, 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 State as the case may be.

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

Penalty: Fifty pounds. Default penalty.

## Register of charges to be kept by Registrar.

U.K. s. 98.  
N.S.W. s. 187.  
Vic. s. 75.  
Qsld. s. 86.  
S.A. s. 103.  
Tas. s. 74.

**103.** (1) The Registrar shall keep a register 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 subsection (5) of section 100 ; 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.

**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 so registered—

Endorsement  
of certificate  
of registration  
on debentures.  
U.K. s. 99.  
N.S.W. s. 188.  
Vic. s. 76.  
Qsld. s. 85 (5).  
S.A. s. 104.  
Tas. s. 76.

- (a) a copy of the certificate of registration ; or
- (b) a statement that the registration has been affected and the date of registration.

(2) Subsection (1) of this section shall not apply to any debenture or certificate of debenture stock which has been issued by the company before the charge was registered.

(3) Every person who knowingly and wilfully authorizes or permits the delivery of any debenture or certificate of debenture stock which is not endorsed as required by this section shall be guilty of an offence against this Act.

Penalty : One hundred pounds.

**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,

Entries of  
satisfaction  
and release of  
property from  
charge.  
U.K. s. 100.  
N.S.W. s. 189.  
Vic. s. 77.  
Qsld. s. 98.  
S.A. s. 105.  
Tas. s. 76.

PART IV.  
DIVISION VII.

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 subsection (1) of this 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 enactment) 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.  
108-106.  
N.S.W. ss.  
198-198.  
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 shall be sufficient for the purposes of this subsection.

(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 of the provisions of this section the company and every officer of the company who is in default shall be guilty of an offence against this Act. Penalty: One hundred pounds. Default penalty.

**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 State, be extended by seven days or such further period as the Registrar may from time to time allow.

Documents made out of the State.  
Vic. s. 72 (1).  
S.A. s. 100 (4).

**109.** Except as is otherwise expressly provided in this Act this Division shall apply to any charge that at the date of the commencement of this Act was registrable under the repealed Act but which at that date was not registered under that Act.

Charges, etc., created before commencement of Act.  
Cf. S.A. s. 114.

**110.** A reference in this Division to a company shall be read as including a reference to a foreign company to which Division III of Part XI applies, but nothing in this Division applies to a charge on property outside the State of a foreign company.

Application of Division.  
N.S.W. s. 198.  
Vic. s. 308 (2).  
S.A. s. 113.

## PART V.

## MANAGEMENT AND ADMINISTRATION.

## DIVISION I.—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,  
(1), (2), (3).  
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 State 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 each day, Saturdays, Sundays, and holidays excepted.

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

Penalty : Fifty pounds. Default penalty.

Office  
hours.U.K. s. 107.  
N.S.W. s. 75.  
Vic. s. 95.  
Qld. s. 104.  
S.A. s. 115, (4).  
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 shall be 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 holidays excepted.

Penalty.

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

Penalty : Fifty pounds. Default penalty.

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 subsection the company shall be guilty of an offence against this Act.

(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 wherein its name is not so mentioned ; 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 wherein its name is not so mentioned,

he shall be guilty of an offence against this Act, and where he has signed, issued or authorized to be signed or issued on behalf of the company any bill of exchange, promissory note or other negotiable instrument or any indorsement thereon or order wherein that name is not so mentioned, he shall in addition be liable to the holder of the instrument or order for the amount due thereon unless it is paid by the company.

(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 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 shall be guilty of an offence against this Act.

Name to be displayed on all offices.

Penalty : Fifty pounds. Default penalty.

#### DIVISION II.—DIRECTORS AND OFFICERS.

#### DIVISION II.

**114.** (1) Every public company shall have at least three directors and every proprietary company and every private company shall have at least one director.

Directors.  
U.K. s. 176.  
N.S.W. s. 120.  
Vic. s. 97.  
Qld. s. 140.  
S.A. s. 160.  
W.A. s. 145.  
Tas. s. 83.

(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 or a private company at least one director shall be a natural person who ordinarily so resides.

(3) Subsections (1) and (2) of this section do not apply in relation to a company incorporated before the date of commencement of this Act until the expiration of a period of three months after that date, but non-compliance with this section shall not invalidate any act of, or any transaction entered into by or on behalf of, a company.

## PART V.

## DIVISION II.

Restrictions  
on appoint-  
ment 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) shall 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 any person who has not so consented, the person who certified the list to be correct shall be guilty of an offence against this Act.

**116.** (1) Without affecting the operation of any of the preceding provisions of this Division, every 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.

Qualification  
of director.  
U.K. s. 182.  
N.S.W. s. 122.  
Vic. s. 99.  
Qsld. s. 151.  
S.A. s. 182.  
W.A. s. 147.  
Tas. s. 85.

(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 subsection (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.

(4) A person vacating office under this section shall be incapable of being re-appointed as director until he has obtained his qualification.

**117.** (1) Every person who being an undischarged bankrupt acts as director of, or directly or indirectly takes part in or is concerned in the management of, any corporation except with the leave of the Court shall be guilty of an offence against this Act.

Undischarged  
bankrupts  
acting as  
directors.  
U.K. s. 187.  
N.S.W. s. 123.  
Vic. s. 100.  
Qsld. s. 152.  
S.A. s. 183.  
W.A. s. 148.  
Tas. s. 86.

Penalty : Imprisonment for six months or five hundred pounds or both.

(2) The Court shall not give leave under this section unless notice of intention to apply therefor has been served on the Minister who may be represented at the hearing of and may oppose the granting of the application.

**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 made unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.

Appointment  
of directors to  
be voted on  
individually.  
U.K. s. 183.  
Vic. s. 101.  
Tas. s. 87.

(2) A resolution passed in pursuance of a motion made in contravention of this section shall be void, whether or not its being so moved was objected to at the time.

(3) Where a resolution pursuant to a motion made 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 shall apply 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 or manager or secretary shall be 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 subsection (2) of this 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 shall be read out at the meeting.

(4) Notwithstanding the foregoing 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 foregoing 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.

**121.** 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.

Director of  
public company  
not removable  
by resolution  
of directors.

## PART V.

## DIVISION II.

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. ss. 237 (1),  
290 (4).  
W.A. ss. 226,  
231.  
Tas. s. 90.

**122.** (1) Where a person is convicted whether within or without the State—

(a) on indictment of any offence in connection with the promotion, formation or management of a corporation ;

(b) of any offence involving fraud or dishonesty punishable on conviction with imprisonment for three months or more ; or

(c) of any offence under section 124 or under section 303,

and that person, within a period of five years after his conviction or, if he is sentenced to imprisonment, after his release from prison, without the leave of the Court is a director or promotor of or is in any way, whether directly or indirectly, concerned or takes part in the management of a company, he shall be guilty of an offence against this Act.

Penalty : Imprisonment for six months or two hundred pounds or both.

(2) A person intending to apply for the leave of the Court under this section shall give to the Minister not less than ten days' notice of his intention so to apply.

(3) At the hearing of any application under this section the Minister may be represented and may oppose the granting of the application.

Disclosure of  
interests in  
contracts,  
property,  
offices, etc.

U.K. s. 199.  
N.S.W. s. 129.  
Vic. s. 106.  
Qld. ss. 156,  
157.  
S.A. s. 107.  
W.A. s. 154.  
Tas. s. 92.

**123.** (1) Subject to this section, every 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 subsection (1) of this section shall 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 repayment 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 or for the benefit of or on behalf of a corporation which by virtue of the provisions of subsection (5) of section 6 is deemed to be related to the company that he is a director of that corporation,

and this subsection shall have effect not only for the purposes of this Act 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 subsection (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 shall be of effect unless either it is given at a meeting of the directors or the director takes reasonable steps to ensure that it is brought up and read at the next meeting of the directors after it is given.

(5) Every 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 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.

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(8) Except as provided in subsection (3) of this section, this section shall be 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. 98.

**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 any of the provisions of this section shall be—

(a) liable to the company for any profit made by him or for any damage suffered by the company as a result of the breach of any of those provisions ; and

(b) guilty of an offence against this Act.

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 subsection (5) of section 6 is deemed to be related to that company, or enter into any guarantee or provide any security in connection with a loan made to such a director by any other person but nothing in this section shall apply—

(a) to anything done by a company which 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 subsection (2) of this 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 connection with loans made by other persons, to anything done by the company in the ordinary course of that business.
- (2) Paragraph (c) or (d) of subsection (1) of this section shall not authorize the making of any loan, or the entering into 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 or the entering into the guarantee or the provision of the security shall be jointly and severally liable to indemnify the company against any loss arising therefrom.

(4) Where a company contravenes the provisions of this section any director who authorizes the making of any loan, the entering into any guarantee or the providing of any security contrary to the provisions of this section shall be guilty of an offence against this Act.

Penalty : Two hundred pounds.

(5) Nothing in this section shall operate 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 subsection (1) of this section, that 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 shall be guilty of an offence against this Act.

Penalty : Imprisonment for six months or two hundred pounds.

Register of  
directors'  
share-  
holdings, etc.  
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 subsection (5) of section 6 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 subsection (1) of this 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 Act 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 subsection (1) or subsection (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 section 127 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 every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty : Five hundred pounds. Default penalty.

(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 shall not by virtue of anything done for the purposes of this section be 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 the provisions of 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 Minister 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 Minister 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 subsection (6) or subsection (8) of this section every officer of the company who is in default shall be guilty of an offence against this Act.

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—

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DIVISION II.

(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) Any 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) Every director shall give notice to the company of such matters relating to himself as may be necessary for the purposes of sections 126, 134 and 184 and the Tenth Schedule.

(2) Any such 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 of his income tax, or the rate of income tax, except under a contract which was in force before the commencement of this Act, and which provides expressly, and not by reference to the articles, for payment of such remuneration.

(2) Any provision contained in a company's articles, or in any contract other than a contract referred to in subsection (1) of this 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 of his income tax or the rate of income tax shall have 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 shall not apply to remuneration due before the commencement of this Act or in respect of a period before the commencement of this Act.

(4) Where a company contravenes the provisions of this section the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty : Five hundred pounds.

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DIVISION II.

## 129. (1) It shall not be lawful—

- (a) for a company to make to any 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 connection with his retirement from any such office ; or

- (b) for any payment to be made to any director of a company in connection with the transfer of the whole or any part of the undertaking or property of the company,

Payments  
to director  
for loss of  
office, etc.  
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.

unless particulars with respect to the proposed payment (including the amount thereof or the means by which the amount will be ascertained) 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 connection 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, that director shall take all reasonable steps to secure that particulars with respect to the proposed payment, including the amount thereof, shall be included in or sent with any notice of the offer made for their shares which is given to any shareholders, unless those particulars are furnished to the shareholders by virtue of section 184.

(3) A director who fails to comply with subsection (2) of this 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 subsection and who fails so to do, shall be guilty of an offence against this Act, and if the requirements of that subsection 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 connection with any such transfer the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of the like shares or any valuable consideration is given to any such director, the excess or the money value of the consideration, as the case may be, shall, for the purposes of this section, be deemed to have been a payment

PART V.  
DIVISION II.

made to him by way of compensation for loss of office or as consideration for or in connection with his retirement from office.

As to  
payments  
to directors.

(5) Any reference in this section to payments to any director of a company by way of compensation for loss of office or as consideration for or in connection with his retirement from office shall not include—

- (a) any payment under an agreement entered into before the commencement of the repealed Act ;
- (b) any payment under an agreement particulars whereof have been disclosed to and approved by the company in general meeting ;
- (c) any *bona fide* payment by way of damages for breach of contract ;
- (d) any *bona fide* payment by way of pension or lump sum payment in respect of past services, including any superannuation or 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) any 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 shall be in addition to and not in derogation of any rule or 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 any 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 shall, notwithstanding anything in the said provision, be 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.

**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,

Powers to require disclosure of director's emoluments.  
Cf. U.K. s. 196.  
N.S.W. s. 128.  
Vic. Ninth Schedule.  
S.A. s. 166.  
Qld. s. 155.

requiring the emoluments of the directors of the company or of a subsidiary to be disclosed, the company shall forthwith—

- (i) 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 ;
- (ii) lay the statement before the company in general meeting ; and
- (iii) 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 any of the provisions of this section the company and every director of the company shall be guilty of an offence against this Act.

Penalty : Five hundred pounds.

**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 State.

Secretary.  
U.K. ss. 177-179.  
Vic. s. 110.  
S.A. s. 116.  
W.A. s. 10.  
Tas. s. 96.

(2) The sole director of a proprietary company or of a private 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 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

## PART V.

## DIVISION II.

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) Subsections (1) and (2) of this section do not apply in relation to a company incorporated before the date of commencement of this Act 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, shall be 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 connection with any application in relation thereto in which relief is under this Act 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 a copy of his consent in writing to appointment as such (if such consent is required by this Act) 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 shall not be necessary for the register to contain

particulars of directorships held by a director in a company that by virtue of subsection (5) of section 6 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 shall be sufficient compliance with the provisions of subsection (2) of this 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 that fact and containing, with respect to each then existing 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) If default is made in complying with any provision of this section the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty : Fifty pounds. Default penalty.

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(8) 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 Act, be received as *prima facie* evidence of the facts stated therein and for the purposes of this subsection 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 III.

DIVISION III.—MEETINGS AND PROCEEDINGS.

Statutory  
meeting and  
statutory  
report.

U.K. s. 180.  
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 at 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 to every member of the company a report to be called the "statutory report" certified as correct by the auditors (if any) 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 and 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 subsequently to 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 Act, 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, every officer of the company who is in default and every director of the company who fails to take all

## PART V.

## DIVISION III.

reasonable steps to secure compliance with the provisions of this section shall be guilty of an offence against this Act.

Penalty : Fifty pounds. Default penalty.

## Annual general meeting.

U.K. s. 181.  
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 so long as 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) Notwithstanding the provisions of subsection (1) of this section, 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 that subsection, 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 every officer of the company who is in default shall be guilty of an offence against this Act ; and

(b) the Court may, on the application of any member, order a general meeting to be called.

## Convening of extraordinary general meeting on requisition.

U.K. s. 182.  
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.

s. 137. SOUTH NORSEMAN GOLD MINES NO LIABILITY V. MACDONALD (1937) S.A.S.R. 53.  
The lodging of a requisition to call a general meeting of a company signed by the shareholders having the necessary voting power and number of shares is the sole condition for bringing into existence the duty of the directors to call the meeting. The subsequent withdrawal by one of the requisitionists from the register does not affect the right which the remaining requisitionists may have to call the meeting.

(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 any 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 Act in the case of special resolutions.

**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.

Calling of meetings.  
U.K. ss. 133, 134.  
N.S.W. s. 95  
Vic. s. 116.  
Qsld. s. 125.  
S.A. s. 134.  
W.A. s. 117.  
Tas. s. 102.

(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 subsection (2) of this 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 thereat; or
- (b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote thereat, 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 thereat 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, any member shall not invalidate proceedings at a meeting.

Articles as to  
right to  
demand a  
poll.

U.K. s. 137.  
Vic. s. 119 (3).  
Qsld. s. 127 (4).  
S.A. s. 136 (4).  
W.A. s. 119 (3).  
Tas. s. 105 (4).

**139.** (1) Any provision contained in a company's articles shall be 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 subsection (1)

of this 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.

**140.** (1) So far as the articles do not make other provision in that behalf—

- (a) in the case of a proprietary company or a private company, two members of the company, and in the case of any other company, three members of the company, personally present shall be a quorum ;
- (b) any member elected by the members present at a meeting may be chairman thereof ; 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.

Quorum,  
chairman,  
voting, etc., at  
meetings.

U.K. s. 139.  
N.S.W. ss. 95,  
96.  
Vic. s. 117.  
Qsld. ss. 125,  
126.  
S.A. ss. 134 (1),  
135.  
W.A. ss. 117  
118.  
Tas. s. 103.

(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 shall, in accordance with his authority and until his authority is revoked by the corporation, be 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 subsection (3) of this section ; and
- (b) the person is not otherwise entitled to be present at the meeting,

the corporation shall, for the purposes of subsection (1) of this section, be deemed to be personally present at the meeting.

(5) A certificate under the seal of the corporation shall be *prima facie* evidence of the authorization or of the revocation of the authorization (as the case may be) of a representative pursuant to the provisions of subsection (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 subsection (3) of this section stating that any act, matter, or thing, or any ordinary or special resolution, required by this Act 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 as the case requires, by or at an extraordinary general meeting of the subsidiary.

(7) Where by or under any provision of this Act any notice, copy of a resolution, or other document relating to any matter is required to be lodged by a company with the Registrar, and a minute referred to in subsection (6) of this section is signed by the representative in pursuance of that subsection and 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 subsection (2) of this 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, shall be entitled to appoint another person (who, if the articles so provide, shall be a member, but otherwise need not be a member) 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 shall also have the same right as the member to speak at the meeting, but unless the articles otherwise provide, a proxy shall not be entitled to vote except on a poll.

(2) A member of a proprietary company or a private company shall not be entitled to appoint another person as his proxy under subsection (1) of this 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 shall be a member or need not be a member, as the case requires; and if default is made in complying with this subsection as respects any meeting, every officer of the company who is in default shall be guilty of an offence against this Act.

(4) Any 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 shall be guilty of an offence against this Act.

Penalty : One hundred pounds.

(5) No person shall be guilty of an offence under subsection (4) of this 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.

**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 Act, 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 called, held and conducted in such manner as the Court thinks fit, and may give such ancillary or consequential directions as it thinks expedient, including a direction that one member present in person or by proxy shall be deemed to constitute a meeting.

Power of  
Court to  
order  
meeting.  
U.K. s. 135.  
N.S.W. s. 95.  
Vic. s. 118.  
S.A. s. 134 (2).

(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.

**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 subsection (2) of this section and (unless the company otherwise resolves) at the expense of the requisitionists—

Circulation of  
members'  
resolutions,  
etc.  
U.K. s. 140

(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 subsection (1) of this section shall be—
- (a) any 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 subsection (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 shall not be 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 subsection, shall be deemed to have been properly deposited for the purposes thereof.

(5) The company shall not be 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 subsection notice shall be deemed to have been so given notwithstanding the accidental omission to give it to one or more members.

(7) In the event of any default in complying with the provisions of this section, the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty: Five hundred pounds.

**144.** (1) A resolution of a company shall be a special resolution if it has been 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 the company of which not less than twenty-one days' notice specifying the intention to propose the resolution as a special resolution has been duly given.

Special  
resolutions,  
U.K. s. 141.  
N.S.W. s. 97  
Vic. s. 119.  
Qsld. s. 127.  
S.A. s. 136.  
W.A. s. 119.  
Tas. s. 105.

(2) Notwithstanding the provisions of subsection (1) of this 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

s. 144. HARVEY v. THE ADELAIDE AND HINDMARSH TRAMWAY COMPANY LIMITED (1881) 15 S.A.L.R. 136; 3 Austn. Digest 830. A resolution passed at a meeting of a company may be held bad for vagueness.

In re RHODESIAN MANUFACTURING COMPANY LIMITED (1927) S.A.S.R. 310; 3 Austn. Digest 837. Held (under section 48 of the Companies Act, 1892) that where a poll was required to be demanded by two members, it must be demanded by two members personally present at the meeting. A demand by one member holding proxies for two other members was not sufficient.

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 any meeting at which a special resolution is submitted a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) At any 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 one-tenth of the paid-up share capital of the company or if that member represents or those two members together represent not less than one-tenth of the total voting rights of all the members having a right to vote at the meeting.

(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 Act 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 Act or by the articles.

Transitory provisions.

(7) Any extraordinary resolution or any special resolution under the repealed Act duly and appropriately passed before the commencement of this Act shall for the purposes of this Act be treated as a special resolution.

(8) Where in the case of a company incorporated before the commencement of this Act any matter is required or permitted to be done by extraordinary resolution or by special resolution under the repealed Act that matter may be done by special resolution under this Act.

Resolution requiring special notice.

U.K. s. 142  
Vic. s. 120.  
Tas. s. 106.

**145.** Where by this Act special notice is required of a resolution, the resolution shall not be effective unless notice of the intention to move it has been given to the company not less than twenty-eight days before the meeting at which it is moved,

and 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.

**146.** (1) A printed copy of—

- (a) every special resolution of a company ; and
- (b) every resolution or agreement which has been agreed to by all the members of some class of shareholders of a company 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,

Registration  
and copies  
of certain  
resolutions and  
agreements.

U.K. s. 148.  
N.S.W. s. 98.  
Vic. s. 121.  
Qld. s. 128.  
S.A. s. 137.  
W.A. s. 121.  
Tas. s. 107.

shall, except where otherwise expressly provided by this Act, within one month after the passing or making thereof, be lodged by the company with the Registrar together with the 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 any member at his request on payment of two shillings and sixpence or such less sum as the company directs.

(3) In the event of any default in complying with subsection (1) of this section the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty : Fifty pounds. Default penalty.

(4) In the event of any default in complying with the provisions of subsection (2) of this section the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty : Five pounds for each copy in respect of which default is made.

s. 146. TELEGRAPH PROSPECTING GOLD MINING COMPANY (LIMITED) v. SOLOMON (1876) 10 S.A.L.R. 68. Held that where a special resolution for the issue of new shares was recorded with the registrar under section 52 of the Companies Act, 1864, it bound the directors of the company and the allottees of new shares, although the preliminaries to the holding of the meeting prescribed by the articles of the company were not complied with.

## PART V.

## DIVISION III.

Resolutions  
at adjourned  
meetings.

U.K. s. 144.  
N.S.W. s. 99.  
Vic. s. 122.  
Qsld. s. 129.  
S.A. s. 138.  
W.A. s. 122.  
Tas. s. 108.

Minutes of  
proceedings.

U.K. s. 145.  
N.S.W. s. 100.  
Vic. s. 123.  
Qsld. s. 130.  
S.A. s. 139.  
W.A. s. 123.  
Tas. s. 109.

Inspection of  
minute books.

U.K. s. 146.  
N.S.W. s. 101.  
Vic. s. 124.  
Qsld. s. 131.  
S.A. s. 140.  
W.A. s. 124.  
Tas. s. 110.

**147.** Where a resolution is passed at an adjourned meeting of a company or 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.

**148.** (1) Every 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 subsection (1) of this section shall be 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 every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty : One hundred pounds. Default penalty.

**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 State of the company, and shall be open to the inspection of any member without charge.

(2) Any member shall be 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 subsection (1) of this section at a charge not exceeding two shillings for every hundred words thereof.

(3) If any copy required under this section is not so furnished the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty : Twenty pounds. Default penalty.

## DIVISION IV.—REGISTER OF MEMBERS.

## DIVISION IV.

150. Nothing in this Division (other than subsection (5) of section 153) shall apply to a mutual life assurance company limited by guarantee so long as that company complies with the provisions of the law of the Commonwealth for the time being in force relating to the keeping of registers, indexes and other records relating to its members.

Non-application of the Division to mutual life assurance companies.  
Vic. s. 125.  
Tas. s. 112.

151. (1) Every company shall keep a register of its members and enter therein—

Register and index of members.

- (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 members' 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.

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.

(2) Notwithstanding anything in subsection (1) of this section, where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, 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 subsection (1) of this section.

(3) Notwithstanding anything in subsection (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 shall be *prima facie* evidence of any matters inserted therein as required or authorized by this Act.

s. 151. ANSETT v. GUINEA AIRWAYS LIMITED AND POTTER (1945) S.A.S.R. 94. Semble, the omission of the occupation of a person is not fatal to the valid registration as a member of a company notwithstanding that section 119 of the Companies Act, 1934, requires a statement of the occupation.

## PART V.

## DIVISION IV.

Index of  
members of  
company.

(5) Every company having more than fifty members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index 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 every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty : Fifty pounds. Default penalty.

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 State 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 State.

(2) Every 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 every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty : Fifty pounds. Default penalty.

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 some daily newspaper circulating generally throughout the State, 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 thereof, but only 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 subsection (3) of this section the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty : Twenty pounds. Default penalty.

(5) Any member of a mutual life assurance company, being a company limited by guarantee, shall be 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.

**154.** Where, by virtue of paragraph (b) of subsection (1) of section 152, 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 subsection (1) or subsection (2) of that section or with section 153 or with any requirements of this Act as to the production of the register, that other person shall be 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 373 shall extend to the making of orders against that other person and his officers and servants.

Consequences  
of default by  
agent.  
U.K. s. 114.

## PART V.

## DIVISION IV.

Power of  
Court to  
rectify  
register.

U.K. s. 116.  
N.S.W. s. 83.  
Vic. s. 129.  
Qsld. s. 112.  
S.A. s. 124.  
W.A. s. 107  
Tas. s. 117.

## 155. (1) If—

- (a) the name of any 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 or 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 any application under subsection (1) of this section the Court may decide—

- (a) any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between 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 Act 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.

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s. 155. LEVI v. WHEAL JAMES MINING COMPANY (1878) S.A.L.R. 1226; 3 Austn. Digest 709. In *re* THE PARARA MINING AND SMELTING COMPANY LIMITED; *Ex parte* H. A. WOOD (1879) 13 S.A.L.R. 117; 3 Austn. Digest 709. Held in both cases on the facts that the shareholder had not been guilty of such laches as to disentitle him to have the register rectified.

In the matter of the MOUNT JAMES CONSOLIDATED SILVER MINING COMPANY LIMITED (1889) 23 S.A.L.R. 127; 3 Austn. Digest 1024. Ordered that a shareholder's name be removed from the register, where the promoter of the company had procured the shareholder to be registered without payment of money in order to secure the number of applications for shares necessary to "float" the company; "flotation" being a condition precedent to making certain payments to the promoter's nominees.

HOOD v. IVANHOE SOUTH EXTENDED GOLD MINING COMPANY (1899) S.A.L.R. 146; 3 Austn. Digest 707. Where an irregular entry of a shareholder's name on the register was ratified by the company, but the name was subsequently removed from the register, held that the name must be restored to the register.

COMMONWEALTH HOMES AND INVESTMENT COMPANY LIMITED v. MACKELLAR (1939) 63 C.L.R. 351; 13 A.L.J. 382. A *bona fide* dispute between a company and a person whose name appears in its share register, arising out of a claim by that person that the allotment of the shares, or the agreement to take the shares, is void or voidable by him may be the subject of a compromise resulting in the cancellation of the allotment of the shares and the removal of his name from the share register.

## PART V.

## DIVISION IV.

Limitation of liability of trustee, etc., 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) Any trustee, executor or administrator of the estate of any deceased person who was registered in a register or branch register kept in the State 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 shall in respect of that share be subject to the same liabilities, and no more, as he would have been subject to if the share had remained registered in the name of the deceased person.

(2) Any 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 State 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 shall in respect of the share be subject to the same liabilities, and no more, as he would have been subject to 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 State 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 subsection (1) or (2) or (3) of this section and the corporation concerned shall not be affected with notice of any trust by anything so done or be bound to see to the execution of any trust expressed, implied or constructive, to which any of the shares in the corporation may be subject.

(5) A person who holds shares in a proprietary company or a prescribed private company as defined in section 397 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 Act, within one month after such commencement ; or
- (b) if the shares are acquired and so held after the commencement of this Act, within one month after they are so acquired,

give the secretary of the proprietary company or prescribed private company notice in writing that he so holds the shares.

s. 156. *ANSETT v. GUINEA AIRWAYS LIMITED AND POTTER* (1945) S.A.S.R. 94. Semble, where the registration requires a statement of the occupation under section 125 of the Companies Act, 1934, the description of the person as "executor" will satisfy the requirement to state the occupation.

## PART V.

## DIVISION IV.

## 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. 11.

**157.** (1) A company having a share capital may cause to be kept in any place outside the State 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 and 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 or of the change or discontinuance, as the case may be.

(3) A branch register shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement required before the register is closed shall be inserted in some 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, which shall for all purposes of this Act 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 other State or Territory of the Commonwealth or in any other country, any corporation incorporated under that law keeps in the State a branch register of its members, the Governor may by order published in the *Government Gazette* declare that the provisions of this Act relating to inspection, place of keeping and rectification of registers of members shall, subject to any modifications specified in the order, apply to and in relation to any such branch register kept in the State as they apply to and in relation to the registers of companies under this Act and thereupon those provisions shall apply accordingly.

(8) If default is made in complying with this section the company and every officer of the company who is in default and

every person who, pursuant to section 152 has arranged to make up the principal register, and who is in default shall be guilty of an offence against this Act.

Penalty: Fifty pounds. Default penalty.

DIVISION V.—ANNUAL RETURN.

DIVISION V.

**158.** (1) Every 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.

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.  
Eighth  
Schedule.

(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 or by the 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) The Registrar may, on the application of an exempt proprietary company, or a prescribed proprietary company or a prescribed private company to which section 398 applies, by notice in writing given to such company, fix a date in lieu of the date of the annual general meeting of the company as the date—

- (a) up to which the return to be made by that company under subsection (2) of this section must be made; and
- (b) from which the time within which the return must be lodged under subsection (4) of this section is to be calculated,

and when a date has been so fixed, this section shall be construed, so far as it applies to that company, as if the date so fixed were substituted for the date of the annual general meeting referred to in subsections (2) and (4) of this section.

## PART V.

## DIVISION V.

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

Penalty : One hundred pounds. Default penalty.

Annual return by company not having a share capital.  
U.K. s. 125.  
N.S.W. s. 89.  
Vic. s. 135.  
Qld. s. 119.  
S.A. s. 130.  
W.A. s. 118.  
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 subsection (2) of this 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 Act, kept elsewhere than at the 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) all 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 every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty : One hundred pounds. Default penalty.

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—

Eighth Schedule.

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 subsection applies.

(2) The Governor may by order published in the *Government Gazette* require any company to which subsection (1) of this section applies to comply with all or any of the provisions of this Division or of the Eighth Schedule referred to in subsection (1) of this section.

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

Penalty : One hundred pounds. Default penalty.

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PART VI.

ACCOUNTS, AUDIT AND INVESTIGATION.

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PART VI.

DIVISION I.—ACCOUNTS

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DIVISION I.

**161.** (1) Every company and the directors and managers thereof 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.

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.

(2) The company shall retain the records referred to in subsection (1) of this section for seven years after the completion of the transactions or operations to which they respectively relate.

(3) The records referred to in subsection (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 State there shall be sent to and kept at a place in the State 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 given to the Court that information acquired by the auditor during his inspection shall not be disclosed by him except to that director.

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

Penalty: Imprisonment for three months or One hundred pounds. Default penalty.

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.  
Qsld. ss. 133, 134.  
S.A. ss. 142, 148, 149.  
W.A. s. 126.  
Tas. ss. 131, 132.

**162.** (1) The directors of every company shall at some date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year, 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 subsection (1) of this section the Registrar, on application by the company, if for any special reason he thinks fit so to do, may extend the period of eighteen months referred to in that subsection and with respect to any year extend the period of six months referred to in that subsection, notwithstanding that that period is so extended beyond the calendar year.

(3) The directors of every 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 subsection (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 165 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 subsection (5) of this 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) In subsection (6) of this section, without affecting the generality of the expression "items of an abnormal character", that expression includes—

- (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 any 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 subsection (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 subsection (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) The provisions of paragraph (a) of subsection (8) of this section shall not apply in any 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 subsection (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 subsection (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 law of the Commonwealth relating to banking 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 law, shall be deemed to comply with the provisions of this Act relating to the form and content of balance-sheets and profit and loss accounts and the provisions of subsection (5) of this section shall not apply to any such balance-sheet.

Ninth Sched.

(12) Every 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 or a private 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) Every 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 Act) 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) None of the preceding provisions of this section shall apply to a company registered under the law of the Commonwealth relating to life insurance, but every such 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 law within nine months after the expiration of the period in respect of which the balance-sheet, revenue account and profit and loss account were prepared.

**163.** (1) If any 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 shall be guilty of an offence against this Act.

Penalty.  
U.K. s. 147 (4)  
N.S.W. s. 102.  
Vic. s. 133.  
Qld. s. 133 (3).  
S.A. s. 142 (3),  
148 (2).  
W.A. s. 126.  
Tas. s. 134.

Penalty : Imprisonment for six months or two hundred pounds.

(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 shall be 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 any offence under this section unless in the opinion of the court dealing with the case the offence was committed wilfully.

**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 Act 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.

Members of  
company  
entitled to  
balance-sheet,  
etc.  
U.K. s. 158.  
N.S.W. s. 111.  
Vic. s. 139.  
Qld. s. 140.  
S.A. s. 150, 151.  
W.A. s. 134.  
Tas. s. 135.

PART VI.  
DIVISION I.

(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 Act to be attached thereto) together with a copy of the auditor's report (if any) thereon.

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

(4) Nothing in this section shall apply to a mutual life assurance company limited by guarantee registered under the law of the Commonwealth relating to life insurance.

DIVISION II.

DIVISION II—AUDIT.

Appointment  
and remunera-  
tion of  
auditors.  
U.K. ss. 159-  
161.  
N.S.W. s. 113.  
Vic. s. 141.  
Qaid. 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 auditor so appointed shall, subject to this section, hold office until the next annual general meeting of the company.

(3) Subject to subsections (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 subsection (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 subsection (4) of this section, give notice in writing of the removal to the Board and, if the company does not appoint another auditor under subsection (7) of this section, the Board shall appoint an auditor.

(9) An auditor appointed in pursuance of subsection (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 shall not be 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 shall not be capable of being appointed auditor of a company at an annual general meeting unless he held office as 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 subsection (7) of this section or at an annual general meeting, the company shall, not less 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, subsection (12) of this section shall 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 subsection (13) of this section, it is required to be sent, the company shall be deemed to have complied with that subsection 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 subsection 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—

- (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 or employer or employee of the auditor, by or from the company or any subsidiary of the company in respect of services other than auditing services rendered to the company, the company shall forthwith—

- (i) 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 ;
- (ii) forward a copy of the statement to all persons entitled to receive notice of general meetings of the company ; and
- (iii) 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 Act.

Penalty : Five hundred pounds.

**167.** (1) Every 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 Act 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 Act.

(2) Every auditor shall, as the case requires, state in his report—

- (a) if he has not obtained all the information and explanations that he required ;

Powers and duties of auditors as to reports on accounts.

U.K. s. 162.  
N.S.W. s. 115.  
Vic. s. 142.  
Qld. s. 144.  
S.A. s. 155.  
W.A. s. 139.  
Tas. s. 139.

- (b) if, in his opinion, proper accounting and other records (including registers) have not been kept by the company ;
- (c) if, in his opinion, the returns submitted from branches not visited by the auditor are inadequate ;
- (d) if, 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) if, 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 ; and
- (f) if, 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 Act,

and shall give particulars of any failure or shortcoming in respect of any of the matters referred to in this subsection.

(3) Every auditor shall have a right of access at all times to the accounting and other records (including registers) of the company and shall be 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.

S.A. ss. 134 (3),  
155 (3).

(5) The auditor shall be 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) Any officer of a company who refuses or fails without lawful justification to allow any 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 shall be guilty of an offence against this Act.

Penalty: Fifty pounds. Default penalty.

### DIVISION III.—INSPECTION.

### DIVISION III.

**168.** (1) This Division does not authorize any investigation into the life insurance business of a company.

Application and interpretation.

N.S.W. s. 118 (4).  
Vic. s. 143.  
S.A. s. 154 (4).  
W.A. s. 142 (4).  
Tas. s. 140.

(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 paragraph (a) of this subsection ; 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 paragraph (c) of this subsection—that person.

**169.** (1) The Governor 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 Governor directs—

Investigation of affairs of company by inspectors at direction of Governor.

U.K. s. 165.  
N.S.W. s. 116.  
Vic. s. 144.  
Qld. ss. 145  
146.  
S.A. ss. 156,  
157.  
W.A. ss. 140,  
143.  
Tas. s. 141.

- (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 Governor requires as to the reasons for the application and the motives of the applicants in requiring the investigation, and the Governor 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 Minister shall, make interim reports to the Governor 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 Governor, and a copy of the report shall be forwarded by the Governor to the registered office of the company, and a further copy shall at the request of the applicants be delivered to them.

(4) The Governor 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 Governor that any person has been guilty of any offence in relation to the company, the Governor may refer the matter to the Minister.

(6) If where any matter is referred to the Minister under subsection (5) of this section 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 Minister so to do give all assistance in connection with the prosecution which they are reasonably able to give.

(7) If from any report under this section it appears to the Minister 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 connection 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 6 he shall have 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, 158, 159.  
W.A. s. 140.  
Tas. s. 143.

(2) Every officer and agent of a corporation the affairs of which are being investigated under 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 connection with the investigation which he is reasonably able to give.

(3) An inspector may, by notice in the prescribed form, require any 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 that officer or agent.

(4) If any officer or agent of any corporation the affairs of which are being investigated pursuant to this Division fails to comply with the requirements of any notice issued under subsection (3) of this 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, which 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) No person who is or has formerly been an officer or agent of a corporation the affairs of which are being investigated under this Division shall be entitled to refuse to answer any

## PART VI.

DIVISION III.

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 subsection 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 subsection (5) of this section any person shall be 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 any answer which that person would not have been required to give but for the provisions of subsection (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 under this Division (including the costs of any proceedings brought by the Minister in the name of the company) shall be paid—

(a) where as a result of the investigation a prosecution is instituted, out of moneys provided by Parliament ;  
or

(b) in any other case, by the company investigated or, if the Governor so directs, by the applicants, or in part by the company and in part by the applicants.

(9) Notwithstanding the provisions of subsection (8) of this section—

(a) if the company fails to pay the whole or any part of the sum which it is so liable to pay, 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 subsection (8) of this section been directed by the Governor to pay ; and

(b) any balance of the expenses not paid either by the company or the applicants shall be paid out of moneys provided by Parliament.

(10) A copy of the report of any inspector appointed under this Division certified as correct by the Minister shall be 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 IV.—SPECIAL INVESTIGATIONS.

## DIVISION IV.

172. (1) In this Division—

“company to which this Division applies” means a company or foreign company declared by the Governor in pursuance of this section to be a company to which this Division applies ;

“officer or agent” has the same meaning as in section 168.

(2) Subject to subsection (3) of this section, the Governor may by proclamation published in the *Government 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 Governor is satisfied that a *prima facie* case has been established that, for the protection of the public, the holders of the interests to which the provisions of Division V 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 another State or of a Territory of the Commonwealth, or of another country has requested that a declaration be made in pursuance of this section in respect of the company.

173. (1) The Governor may appoint one or more inspectors to investigate the affairs of any company to which this Division applies and to report thereon in such manner as the Governor directs.

(2) An appointment under this section shall in all respects have the same force and effect as an appointment of an inspector or inspectors pursuant to Division III of this Part, and for the purposes of this Division the provisions of and powers conferred by that Division, shall with such adaptations as are necessary extend and apply accordingly except that—

(a) the inspector shall report his opinion to the Minister ;  
and

(b) the expenses of and incidental to the investigation shall be defrayed out of moneys provided by Parliament.

(3) Notwithstanding the provisions of subsection (2) of this section the Governor may direct that the expenses or any portion thereof shall be paid by the company or any person who

Application  
and  
interpretations.

Vic. s. 147.  
Qsld. s. 145 (8).  
S.A. s. 158a (1),  
(1a), (1b), (4).  
W.A. s. 143.  
Tas. s. 144.

Appointment  
of investigators  
Vic. s. 148.  
Qsld. s. 145 (8).  
Tas. s. 145.  
S.A. s. 158a.

requested that the appointment be made and, if the Governor so directs, any balance of the expenses shall be defrayed out of money provided by Parliament.

(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) Any 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 subsection (4) of this section ; or

(b) refuses or fails to answer any question lawfully put to him by any such person,

shall be liable to be dealt with in the same manner as is provided in subsection (4) of section 171 for refusing or failing to comply with the request of an inspector.

Suspension  
of actions  
and proceed-  
ings by  
company, etc.  
Vic. s. 149.  
Tas. s. 146.

174. (1) On and after the appointment of an inspector in respect of any company to which this Division applies, until the expiration of three months after the inspector has presented his final report to the Minister, no action or proceeding shall without the consent of the Minister 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 shall be void and of no effect.

**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 State are concerned of the affairs of the company,

may be made on petition of the Minister 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 Act shall, with such adaptations as are necessary, apply as if—

(i) (in the case of a company) a winding up petition had been duly presented to the Court by the company ; and

(ii) (in the case of a foreign company) a petition for an order for the affairs of the company so far as assets within the State are concerned to be wound up within the State 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 subsection (1) of this section an order is made for the affairs of the company so far as assets within the State are concerned to be wound up within the State, the company shall not carry on business or establish or keep a place of business within the State.

**176. (1) Any 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 State 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,

shall be guilty of an offence against this Act.

Penalty : Imprisonment for two years or five hundred pounds.

Winding up  
of company  
Vic. s. 150.  
Tas. s. 147.  
Qld. s. 145 (8).

Penalty  
Vic. s. 15  
Tas. s. 14

(2) If in any 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 State 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 shall lie on him.

Appointment  
and powers of  
inspectors to  
investigate  
ownership of  
company.  
U.K. s. 172.

177. (1) Where it appears to the Minister 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, whether as respects the matters or the period to which it is to extend or otherwise, and in particular may limit the investigation to matters connected with particular shares or debentures.

(3) Where an application for an investigation under this section with respect to particular shares or debentures of a company is made to the Minister 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 III of this Part, the Minister 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 Minister is satisfied that it is unreasonable for that matter to be investigated.

(4) Subject to the terms of an inspector's appointment his powers shall extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of his investigation.

(5) For the purposes of any investigation under this section the provisions of Division III of this Part shall apply with the necessary modifications of references to the affairs of the company or to those of any other corporation, but so that—

(a) that Division shall apply 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 they apply in relation to officers and agents of the company or of the other corporation, as the case may be ; and

(b) the Minister shall not be 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 report or of parts thereof, but 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 any investigation under this section shall be defrayed out of moneys provided by Parliament.

**178.** (1) Where it appears to the Minister 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 Minister 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 Minister may require that person to give him any information which the firstmentioned 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.

Power to  
require  
information  
as to persons  
interested  
in shares or  
debentures.  
U.K. s. 173.

PART VI.  
DIVISION IV.

(2) For the purposes of this section, a person shall be deemed to have an interest in a share or debenture if he has any 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) Any 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, shall be guilty of an offence against this Act.

Penalty : Imprisonment for six months or five hundred pounds or both.

Power to  
impose  
restrictions on  
shares or  
debentures.  
U.K. s. 174.

179. (1) Where in connection with an investigation under section 177 or section 178, it appears to the Minister 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 Act, the Minister may by order published in the *Government Gazette* direct that the shares are until further order subject to the following restrictions—

- (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, shall be void ;
- (b) that no voting rights shall be 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,

and those shares shall thereupon be subject to those restrictions until an order is made by the Minister or the Court directing that the shares have ceased to be subject thereto.

(2) Where the Minister makes an order directing that shares are subject to the restrictions referred to in subsection (1) of this 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 Minister or of the Court directing that shares have ceased to be subject to the restrictions referred to in subsection (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 subsection in relation to those shares, either in whole or in part, 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 subsection (1) of this section, any 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,

shall be guilty of an offence against this Act.

Penalty : Imprisonment for six months or five hundred pounds or both.

(5) Where shares in any company are issued in contravention of the restrictions imposed pursuant to sub-section (1) of this section the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty : Five hundred pounds.

(6) A prosecution shall not be instituted under this section except by or with the consent of the Minister.

(7) This section shall apply in relation to debentures as it applies in relation to shares.

**180.** Where—

- (a) under the law of another State or a Territory of the Commonwealth corresponding with this Division

Inspectors  
appointed  
in other  
States.

an inspector has been appointed to investigate the affairs of a corporation ; and

- (b) the Governor of this State determines that, in connection with that investigation, it is expedient that an investigation be made in this State,

the Governor may by order published in the *Government Gazette* declare that the inspector so appointed shall have the same powers and duties in this State 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 173 and thereupon the inspector shall have those powers and duties.

## PART VII.

## ARRANGEMENTS AND RECONSTRUCTIONS.

**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 in such manner as the Court directs.

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

(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 shall, if approved by order of the Court, be 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 subsection (2) of this section shall have no effect until an office copy of the order is lodged with the Registrar, and upon being so lodged, the order shall take 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 subsection (6) of this section, a copy of every order made under subsection (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 subsection (5) of this section or determine the period during which the company shall so comply.

(7) Where any such compromise or arrangement (whether or not for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies) has been proposed, the directors of the company shall—

- (a) if a meeting of the members of the company by resolution so directs, 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 subsection (1) of this section.

(8) Every company which makes default in complying with subsection (5) or subsection (7) of this section and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty : One hundred pounds.

Power of  
Court to  
restrain  
proceedings.

(9) Where no order has been made or resolution passed for the winding up of a company and any such compromise or arrangement has been proposed between the company and its creditors or any class of such creditors, 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.

Interpretation.  
U.K. s. 206 (6).  
N.S.W. s. 133  
(5).  
Vic. s. 89.  
S.A. s. 171 (6).  
W.A. s. 158 (6).  
Tas. s. 123.

(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 Act.

Information  
as to com-  
promise with  
creditors and  
members.

U.K. s. 207.  
Vic. s. 91.  
Tas. s. 125.

**182.** (1) Where a meeting is summoned under section 181 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 subsection (1) of this 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, every 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 every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty : Five hundred pounds.

(6) For the purposes of subsection (5) of this section the liquidator of the company and any trustee for debenture holders shall be deemed to be an officer of the company.

(7) Notwithstanding the provisions of subsection (5) of this section a person shall not be liable under that subsection 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.

**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 connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as 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 :—

Provisions for facilitating reconstruction and amalgamation of companies.

U.K. s. 208.  
N.S.W. s. 184.  
Vic. s. 92.  
Qld. s. 162.  
S.A. s. 172.  
W.A. s. 159.  
Tas. s. 126.

- (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 within seven days after the making of the order lodge—

- (a) an office copy of the order with the Registrar ; and
- (b) where the order relates to land under The Real Property Act, 1886-1936, as amended, an office copy of the order with the Registrar-General ; and
- (c) where the order relates to any other land, a memorial of the order with the Registrar-General of Deeds,

and every company which makes default in complying with this section and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty : One hundred pounds. Default penalty.

(4) No vesting order referred to in this section shall have any effect or operation in transferring or otherwise vesting land to which The Real Property Act, 1886-1936, as amended, applies

until an entry or a memorandum thereof is made in the Register Book kept under that Act and on the duplicate grant or certificate of title and duplicate instrument (if any).

(5) In this section—

“liabilities” includes duties :

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

(6) Notwithstanding the provisions of subsection (10) of section 181 “company” in this section does not include any company other than a company as defined in section 5.

**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 subsection (5) of section 6 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,

but does not include any scheme involving the making of an offer or offers for the acquisition for cash by or on behalf of a corporation or on behalf of a proposed corporation of all the shares in another corporation the beneficial interests in which are held by the directors of that other corporation.

Take-over  
offers.  
Tenth  
Schedule.

(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 subsection ; and

(ii) if the offeree corporation gives or causes to be given to the offeror corporation a statement in pursuance of paragraph (a) of subsection (3) of this section or in pursuance of any corresponding enactment of another State or Territory of the Commonwealth—a copy of that statement.

(3) Where an offeree corporation receives a notice and statement given in pursuance of subsection (2) of this section or in pursuance of any corresponding enactment of another State or 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 subsection (3) of this 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 subsection (5) of this section, the offeror corporation, and every officer of the corporation who is in default, shall be guilty of an offence against this Act, and where an offeree corporation fails to comply with subsection (3) of this section, the offeree corporation and every officer of that corporation who is in default, shall be guilty of an offence against this Act.

Penalty: Imprisonment for three months or five hundred pounds.

(7) The provisions of sections 46 and 47 shall apply to and in relation to a statement given by an offeror corporation to an offeree corporation in pursuance of paragraph (a) of subsection (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 subsection (1) of section 46 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.

## PART VII.

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. 180.  
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 manner to any dissenting shareholder that it desires to acquire his shares and when such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given or within seven days of a statement being supplied to a dissenting shareholder pursuant to subsection (3) of this section (whichever is the later) the Court thinks fit to order otherwise, be 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 subsection (1) of this 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 subsection (1) of this section shall 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 any dissenting shareholder that it desires to acquire his shares the dissenting shareholder shall be 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 shall be 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 any such scheme or contract 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 subsection with respect to any shares, the transferee company shall be 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 subsection (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 any 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 of the State.

(8) The Treasurer shall sell or dispose of any consideration so received in such manner as he thinks fit and shall deal with the the proceeds of such sale or disposal as if it were moneys paid to him pursuant to the provisions of the Unclaimed Moneys Act, 1891-1935.

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

(10) In relation to an offer made by the transferee company to shareholders of the transferor company before the commencement of this Act, this section shall have effect as if—

- (a) the words "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)" in subsection (1) of this section were omitted and the words "the shares affected" were inserted in lieu thereof;
- (b) subsections (2) and (4) of this section were omitted; and
- (c) the words "together with an instrument of transfer executed, on behalf of the shareholder by any person appointed by the transferee company, and on its own behalf by the transferee company" in subsection (5) of this section were omitted.

Remedy in cases of oppression.  
U.K. s. 210.  
Vic. s. 94.  
Qsld. s. 379A.  
Tas. s. 128.

**186.** (1) Any 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, or, following on a report by an inspector under this Act, the Minister may, apply to the Court for an order under this section.

(2) If the Court is of opinion that the company's affairs are being so conducted the Court may, with a view to bringing to an end the matters complained of—

(a) except where paragraph (b) of this subsection 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 the member or the members referred to in subsection (1) of this section, 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 subsection (2) of this section the provisions of this Act relating to winding up of a company shall, with such adaptations as are necessary, apply 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 any alteration in or addition to any company's memorandum or articles, then, notwithstanding any thing in any other provision of this Act, but subject to the provisions of the order, the company concerned shall not have 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 subsection the alterations or additions made by the order shall be of the same effect as if duly made by resolution of the company.

(5) An office copy of any 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 subsection (5) of this section the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty : Fifty pounds. Default penalty.

## PART VIII.

## PART VIII.

## RECEIVERS AND MANAGERS.

## Disqualification for appointment as receiver.

U.K. ss. 366, 367.  
N.S.W. s. 335.  
Vic. s. 81.  
Qsld. s. 302.  
S.A. s. 311.  
W.A. s. 362.  
Tas. s. 149.

**187.** (1) The following shall not be 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) Any person who is not a registered liquidator.

(2) Nothing in paragraph (a) or (d) of subsection (1) of this section shall apply to any corporation authorized by any Act to act as receiver of the property of a company.

(3) Nothing in this section shall disqualify a person from acting as receiver of the property of a company if acting under an appointment made before the commencement of this Act.

## 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) Any receiver or other authorized person entering into possession of any assets of a company for the purpose of enforcing any charge shall, notwithstanding any agreement to the contrary, but without prejudice to his rights against the company or any other person, be liable for debts incurred by him in the course of the receivership or possession for services rendered, goods purchased or property hired, leased, used or occupied.

(2) Subsection (1) of this section shall not be so construed as to constitute the person entitled to the charge a mortgagee in possession.

## Application for directions.

(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 connection 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.  
Qsld. 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 shall—

- (a) where no previous order has been made with respect thereto, extend to fixing the remuneration for any period before the making of the order or the application therefor ;
- (b) be 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, extend 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 subsection (2) of this section shall not be exercised as respects 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.

**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.

Appointment of liquidator as receiver.  
U.K. s. 368.  
N.S.W. s. 336.  
Vic. s. 84.  
Qsld. s. 302 (4).  
Tas. s. 152.

**191.** (1) If any person obtains an order for the appointment of a receiver or manager of the property of a company or of the property within the State 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.

Notification of appointment of receiver.  
U.K. s. 102.  
N.S.W. s. 191.  
Vic. s. 79.  
Qsld. s. 90.  
S.A. s. 107.  
Tas. s. 78.

(2) Where any person appointed 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) Every person who makes default in complying with the requirements of this section shall be guilty of an offence against this Act.

Penalty : Fifty pounds. Default penalty.

**PART VIII.**

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 every officer and every liquidator of the corporation and every receiver or manager who knowingly and wilfully authorizes or permits the default shall be guilty of an offence against this Act.

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 section 194 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 section 194 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 as aforesaid, 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 thereon.

(2) Subsection (1) of this section shall 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 subsection applies to a receiver or manager who dies or ceases to act before that subsection has been fully complied with, the references in para-

graphs (b) and (c) thereof to the receiver shall (subject to subsection (3) of this section) include references to his successor and to any continuing receiver or manager.

(3) Where the company is being wound up this section and section 194 shall apply notwithstanding that the receiver or manager and the liquidator are the same person, but with any necessary modifications arising from that fact.

(4) If any person makes default in complying with any of the requirements of this section, he shall be guilty of an offence against this Act.

Penalty : Fifty pounds. Default penalty.

**194.** (1) The statement as to the affairs of a company required by section 193 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.

Special provisions as to statement submitted to receiver.

U.K. s. 373.

(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 subsection mentioned as the receiver may require to submit and verify the statement, that is to say—

- (a) persons who are or have been officers of the company ;
- (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) Any 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 any person makes default in complying with the requirements of this section, he shall be guilty of an offence against this Act.

Penalty : Fifty pounds. Default penalty.

(5) References in this section to the receiver's successor shall include a continuing receiver or manager.

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. 213.  
W.A. s. 364.  
Tas. s. 154.

**195.** (1) Every receiver or manager of the property of a company or of the property within the State of any other corporation shall—

(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 a detailed account in the prescribed form showing—

- (i) his receipts and his payments during each 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 those 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 at the time of his appointment, in the case of the first account, and the amount owing under the instrument at the expiration of every six months after his appointment and, where he has ceased to act as receiver or manager, the amount so owing at the date of his so ceasing, and his estimate of the total value of all assets of the company or other corporation which are subject to that instrument ; and

(b) before lodging such 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) Every receiver or manager who makes default in complying with the provisions of this section shall be guilty of an offence against this Act.

Penalty : Fifty pounds. Default penalty.

**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 every winding up are preferential debts and are due by way of wages, salary, annual leave or long service leave and any amount which in a winding up is payable in pursuance of subsection (3) or subsection (5) of section 292 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.

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.  
Qsld. ss. 101, 101A.  
S.A. s. 98.  
W.A. s. 94.  
Tas. s. 155.

(2) For the purposes of subsection (1) of this section the references in paragraphs (b) and (d) of subsection (1) of section 292 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) Any 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.

**197.** (1) If any receiver or manager of the property of a company—

Enforcement of duty of receiver, etc., to make returns.

- (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 so to do ;  
or

U.K. s. 375.  
N.S.W. s. 340.  
Vic. s. 88.  
Qsld. s. 306.  
S.A. s. 314.  
W.A. s. 365.  
Tas. s. 156.

(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 subsection (1) of this 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 subsection the application shall be made by the liquidator.

## PART IX.

## PART IX.

## OFFICIAL MANAGEMENT.

**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 of 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.

Power of company to call meeting of creditors to appoint official manager.

(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 circulating generally throughout the State.

Procedure for calling meeting of creditors.

(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 shall be final, unless 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 shall lapse.

**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 section 198 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.

Stay of proceedings.

**200.** The following provisions apply with respect to any meeting of creditors held under section 198—

Provisions as to meeting of creditors.

- (a) the company shall submit to the meeting a statement of affairs of the company in writing in the prescribed form signed by the directors and auditors thereof, which statement shall be made up to 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 thereof in the prescribed form 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 circulating generally throughout the State ; and

- (b) give written notice to creditors and members of—

- (i) the resolution ; and

- (ii) the right of appeal conferred by section 210.

Effect of  
resolution.

**202.** (1) During the period mentioned in a resolution passed in pursuance of section 201—

- (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 subsection 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, 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 shall prejudice or otherwise affect the rights of any secured creditor of the company.

**203.** Subject to the provisions of section 211 the appointment of a person as official manager may be determined—

Termination  
of appointment  
of official  
manager.

- (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.

**204.** Notwithstanding the appointment of an official manager of a company and for so long as the company is under official management, the provisions of this Act relating to the appointment and 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.

Appointment  
of official  
manager not  
to affect  
appointment  
and duties  
of auditors.

## PART IX.

Duties of  
official  
manager.

**205.** (1) Subject to the provisions of this Act and to such provisions of the memorandum and articles of the company as are not inconsistent with the provisions of this Part, an official manager—

- (a) shall as soon after his appointment as may be, 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 interest 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 Act 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 Act ;
- (f) shall convene during the period the company is under his management the annual general meeting and shall furnish to the persons entitled thereto a report containing such information as is required by this Act 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 shall be guilty of an offence against this Act.

Penalty : One hundred pounds.

PART IX.

**206.** (1) Every disposition of its property which if made by an individual would in the event of his bankruptcy be void or voidable shall, if made by a company placed under official management and unable to pay all its debts, be void or voidable in like manner and the provisions of the law relating to the estates of bankrupt persons shall with such adaptations as are necessary apply to such a disposition.

Undue preferences in case of official management.

(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.

**207.** (1) An official manager 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.

Application of assets during official management and disposal thereof.

(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 202 the costs of the official management and the claims of the creditors of the company shall be paid in accordance with Subdivision (2) of Division IV 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 with the necessary adaptations apply to and in relation to those costs and claims accordingly.

**208.** (1) In every case in which a company is placed under official management, the provisions of paragraph (g) of subsection (1) of section 218 and of sections 248, 304, 305 and 306 apply as if the company under official management were a company being wound up and the official manager were the liquidator and any reference in those sections to contributories shall be taken as a reference to members.

Application of certain provisions in winding up to official management.

(2) The provisions of sections 249 and 250 and when the Court so orders any other section shall 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, any reference to the

liquidator being taken to be a reference to the official manager and any reference to a contributory 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 be subject to the provisions of section 211 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 subsection (1) of section 201 the resolution shall, subject to the right of appeal conferred by this section, be 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 subsection (1) of section 201) 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 shall be 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 shall discharge 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 shall not release or discharge the official manager if it was obtained by fraud or by suppression or concealment of any material fact nor 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 of his making of 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 shall have the same effect as if the reports and accounts had been adopted by a meeting of creditors.

**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.

Documents of company under official management to state that fact.

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

**213.** (1) A committee of management—

Functions of 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 and assistance ; and

(b) may appoint a deputy official manager, who, while so acting, shall have the powers, duties and functions of an official manager, in the absence of the official manager.

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

(3) Subject to this section and the regulations, the provisions of subsections (2) to (9) both inclusive of section 242 shall 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, any reference to the committee of inspection being taken to be a reference to the

PART IX.

committee of management, any reference to the liquidator being taken to be a reference to the official manager and any reference to a contributory being taken to be 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, any person shall 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”, with respect 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.

## PART X.

## WINDING UP.

DIVISION I.

## DIVISION I.—PRELIMINARY.

Modes of winding up.  
N.S.W. s. 189.  
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 Act 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  
(8).

**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 with creditors shall bind the Crown.

## PART X.

## DIVISION I.

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 shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding up and for the adjustment of the rights of the contributories among themselves, subject to the provisions of subsection (2) of this section and the following qualifications :—

- (a) A past member shall not be liable to contribute if he has ceased to be a member for one year or more before the commencement of the winding up ;
- (b) A past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member ;
- (c) A past member shall not be liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act ;
- (d) In the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member ;
- (e) In the case of a company limited by guarantee, no contribution shall, subject to subsection (4) of this section, be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up ;
- (f) Nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted or whereby the funds of the company are alone made liable in respect of the policy or contract ;

s. 218. In *re* THE KARKARILLA MINING COMPANY, LIMITED; MOYLE'S CASE (1867) 1 S.A.L.R. 43; 3 Austn. Digest 986. Where a company incurred debts at a time when it was unregistered and unlimited, but subsequently became registered as a limited company under the Companies Act, 1864, held that the members of the company were not liable for the debts incurred before registration.

GREAT AMALGAMATED GOLD REEFING COMPANY LIMITED v. CARSTAIRS (1877) 11 S.A.L.R. 50; 3 Austn. Digest 760. Where a shareholder lodged a transfer of his shares with the company and paid the transfer fee, but no scrip in favour of the transferee was signed, and the transferor's name was not removed from the register, held that the transferor was liable for calls made by the liquidator.

GREAT AMALGAMATED GOLD MINING COMPANY LIMITED v. MORRIS (1877) 11 S.A.L.R. 9; 3 Austn. Digest 658. A person whose name is on the share register without his consent or authority is not bound to take steps to remove his name from the register; nor is he liable as a contributory.

PART X.  
DIVISION I.

(g) A sum due to any member in his character of a member by way of dividends, profits or otherwise shall not be 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.

Unlimited  
liability of  
directors.

(2) In the winding up of a limited company any director, whether past or present, whose liability is unlimited shall in addition to his liability, if any, to contribute as an ordinary member be liable to make a further contribution as if he were, at the commencement of the winding up, a member of an unlimited company.

(3) Notwithstanding anything in subsection (2) of this section—

(a) a past director shall not be 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 shall not be 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 shall not be 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 guarantee every member shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

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 shall create a debt of the nature of a specialty accruing due from him at the time when his liability commenced but payable at the time when calls are made for enforcing the liability.

Contributories  
in case of  
death 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 shall be 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 thereof 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—

- (a) his trustee shall represent him for all the purposes of the winding up and shall be a contributory accordingly ; and
- (b) there may be proved against his estate the estimated value of his liability to future calls as well as calls already made.

Contributories  
in case of  
bankruptcy  
of member.

U.K. s. 216.  
N.S.W. s. 204.  
Vic. s. 159.  
Qsld. s. 169.  
S.A. s. 191.  
W.A. s. 182.  
Tas. s. 162.

## DIVISION II.—WINDING UP BY THE COURT.

## DIVISION II.

### *Subdivision (1)—General.*

**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 Minister pursuant to section 175 ; 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 subsection (1) of this section—

- (a) a contributory may not present the petition on any of the grounds specified in paragraphs (a), (b), (c), (e) or (h) of subsection (1) of section 222 unless—
  - (i) the number of members is reduced in the case of a proprietary company or a private

Application for  
winding up  
N.S.W. s. 210.  
Vic. ss. 161,  
214.  
Qsld. ss. 175,  
260.  
S.A. ss. 196,  
271.  
W.A. s. 187.  
Tas. s. 164.

s. 221. In *re* THE CITY AND SUBURBAN STEAM BRICKMAKING Co., LTD. (1889) 23 S.A.L.R. 63; 3 Austn. Digest 961. Where a company petitions for the winding up of another company the court may order that the affidavit verifying the petition be made by an officer of the petitioning company.

In the matter of a petition to wind up the PORTABLE GAS COMPANY LIMITED (1892) 25 S.A.L.R. 86; 3 Austn. Digest 959, 962. As to service of petition where company has no registered office in the State. Where the petitioner is a company, the affidavit verifying petition may be made by the manager of the petitioning company.

company (other than a proprietary company or a private company the whole of the issued shares of which are held by a holding company which is a public company under this Act or under the law of any other State or Territory of the Commonwealth) below two or, in the case of any company other than a proprietary company or a private company, below five; or

- (ii) the shares in respect of which he is a contributory or some of them were originally allotted to him; or have been held by him and registered in his name for at least six months during the eighteen months before the 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 nor 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 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 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 ;

s. 222. In the matter of the Companies Act, and in the matter of the KAPUNDA UNITED TRADESMEN'S PROSPECTING COMPANY, LIMITED (1874) 8 S.A.L.R. 55; 3 Austr. Digest 944. Held under the Companies Act, 1864, that the court had power to order winding-up where the company was unable to pursue the objects for which it was formed.

- (d) the number of members is reduced in the case of a proprietary company or a private company (other than a proprietary company or private company the whole of the issued shares in which are held by a holding company which is a public company under this Act or under the law of any other State or Territory of the Commonwealth) below two or, in the case of any company other than a proprietary company or a private 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 169 or section 170 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 the 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—
- Definition of  
inability to  
pay debts.
- (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 that the company is unable to pay its debts ; and in determining whether a company is unable to pay its debts the Court shall take into account the contingent and prospective liabilities of the company.

## PART X.

## DIVISION II.

Commence-  
ment of  
winding up by  
the Court.

U.K. s. 229.  
N.S.W. s. 216.  
Vic. s. 162.  
Qsld. 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, etc., by  
petitioner  
(other than  
company or  
liquidator).  
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 not sufficient assets, and in the opinion of the Minister any fraud has been committed by any person in the promotion or formation of the company or by any officer of the company in relation to the company since the formation thereof, the taxed costs or so much of them as is not so reimbursed may, with the approval in writing of the Minister, to an extent specified by the Minister but not in any case exceeding One hundred and fifty pounds, be reimbursed to the petitioner out of moneys provided by Parliament for the purpose.

As to costs  
when order  
made on  
petition of  
company or  
liquidator.

(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.  
Qsld. 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 be 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 Act, or by the rules or by any prior order of the Court ;
- (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 both 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 held and may order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default.

**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.

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.

## PART X.

## DIVISION II.

## Avoidance of dispositions of property, etc.

U.K. s. 227.  
N.S.W. s. 213.  
Vic. s. 166.  
Qld. s. 178.  
S.A. s. 199.  
W.A. s. 190.  
Tas. s. 169.

## Avoidance of certain attachments, etc.

U.K. s. 228.  
N.S.W. s. 214.  
Vic. s. 166.  
Qld. s. 179.  
S.A. s. 200.  
W.A. s. 274.  
Tas. s. 169.

Petition to be *lis pendens*.

N.S.W. s. 215.  
Vic. s. 165.  
S.A. s. 201.  
W.A. s. 191.  
Tas. s. 170.

## Copy of order to be lodged, etc.

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. 171.

## Actions stayed on winding up order

## Effect of order.

**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 shall, unless the Court otherwise orders, be void.

**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 shall be void.

**229.** Any petition for winding up a company shall constitute a *lis pendens* within the meaning of any law relating to the effect of a *lis pendens* upon purchasers or mortgagees.

**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 subsection 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 shall operate 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 subsection (1) or subsection (2) of this section the petitioner shall be guilty of an offence against this Act.

Penalty : Fifty pounds. Default penalty.

*Subdivision (2)—Liquidators.*

**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.

Appointment  
of official  
liquidator.  
U.K. ss. 237,  
238.  
N.S.W. ss. 220,  
221.  
Vic. s. 167.  
Qsld. ss. 185,  
188.  
S.A. s. 206.  
W.A. s. 196.  
Tas. s. 172.

(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 shall have 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.

Provisional  
liquidator.  
*vide* s. 11

**232.** (1) A liquidator appointed by the Court may resign or on cause shown be removed by the Court.

General  
provisions as  
to liquidators.

(2) A provisional liquidator shall be entitled to receive such salary or remuneration by way of percentage or otherwise as is determined by the Court.

U.K. s. 242.  
N.S.W. s. 228.  
Vic. s. 170.  
Qsld. ss.  
194-198.  
S.A. s. 210.  
W.A. s. 200.  
Tas. s. 175.

(3) A liquidator shall be 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 subsection, by the Court.

(4) Where the salary or remuneration of a liquidator is determined in the manner specified in paragraph (a) of subsection (3) of this 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 subsection (3) of this section the Court may, on the application of the liquidator or a member or members referred to in subsection (4) of this 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 Act 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 Act the acts of a liquidator shall be 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. 210 (6), 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, within seven days after the making of the order, lodge—

- (a) an office copy of the order with the Registrar ;
- (b) where the order relates to land under The Real Property Act, 1886-1936, as amended, an office copy of the order with the Registrar-General; and
- (c) where the order relates to any other land, a memorial of the order with the Registrar-General of Deeds,

and every liquidator who makes default in complying with this section shall be guilty of an offence against this Act.

Penalty : One hundred pounds. Default penalty.

(4) No vesting order referred to in this section shall have any effect or operation in transferring or otherwise vesting land to which The Real Property Act, 1886-1936, as amended, applies until an entry of a memorandum thereof is made in the Register Book kept under that Act and on the duplicate grant or certificate of title and duplicate instrument (if any).

**234.** (1) There shall be made out and 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, 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) Any person making or concurring in making the statement required by this section may, subject to the rules, be allowed,

Statement of  
company's  
affairs to be  
submitted to  
liquidator.

U.K. s. 285.  
N.S.W. s. 222.  
Vic. s. 172.  
Qld., s. 186.  
S.A. s. 208.  
W.A. s. 198.  
Tas. s. 177.

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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) Every person who without reasonable excuse makes default in complying with the requirements of this section shall be guilty of an offence against this Act.

Penalty: Imprisonment for three months or five hundred pounds or both. Default penalty.

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 failure ; and
- (c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company or the conduct of the business thereof.

(2) The 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 shall not be 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 292, pay any class of creditors in full ;

**s. 236.** In *re* KESWICK MOTOR COMPANY LIMITED (1922) S.A.S.R. 241; 3 Austn. Digest 1085; 12 Austn. Digest 1267, 1268. Held that costs of the official liquidator must be taxed as between solicitor and client according to the principles applicable where costs are payable out of a general or common fund. Explanation of principles on which the costs payable by an official liquidator to his solicitor should be taxed.

**GROWDEN v. WILTSHIRE** (1934-35) 52 C.L.R. 286; 8 A.B.C. 92. A bankruptcy petition against a creditor of a company in liquidation should not be presented in the official liquidator's name, but in the name of the company; but the irregularity can be cured by amendment.

- (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 and liabilities to calls, debts and 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) prove, rank and claim in the bankruptcy of any contributory or debtor for any balance against his estate, and receive dividends in the bankruptcy in respect of that balance as a separate debt due from the bankrupt and rateably with the other separate creditors ;
  - (f) draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business ;
  - (g) raise on the security of the assets of the company any money requisite ;

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- (h) take out letters of administration of the estate of any 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 any 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 shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

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 any directions so given by the creditors or contributories shall in case of conflict 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 the property of the company and the distribution of its assets.

s. 237. In *re* FEDERAL BANK OF AUSTRALIA, 2ND MARCH, 1895; S.A. *Advertiser* (newspr.); 3 *Austn. Digest* 1059. Held under section 153 (2) of The Companies Act, 1892, that "creditors" meant the whole of the creditors and not merely those in South Australia.

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**238.** (1) Every liquidator shall, in the manner and at the times prescribed by the rules, pay the money received by him into the bank and account prescribed by the rules or specified by the Court.

(2) If any liquidator retains for more than ten days a sum exceeding twenty-five pounds, or 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 on the amount so retained in excess computed from the expiration of the ten days until he has complied with the provisions of subsection (1) of this section at the rate of twenty per centum per annum, and shall be 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) Any liquidator who pays any sums received by him as liquidator into any bank or account other than the bank or account prescribed or specified under subsection (1) of this section shall be guilty of an offence against this Act.

**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—
  - (i) for an order that he be released; or
  - (ii) for an order that he be released and that the company be dissolved.

**240.** (1) Where an order is made that the company be dissolved the company shall from the date of the order be 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 281 or by some other registered company auditor appointed by the Court ;

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.

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. ss. 219 (1), 241 (1).  
W.A. ss. 209, 230.  
Tas. ss. 185, 203.

As to orders for release or dissolution.

Vic. ss. 180, 193.  
S.A. ss. 219, 241.

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- (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 any creditor or 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 or 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 shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(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 the liquidator who makes default in complying with the requirements of this subsection shall be guilty of an offence against this Act.

Penalty : One hundred pounds. Default penalty.

*Subdivision (3)—Committees of Inspection.*

Meetings to determine whether committee of inspection to be appointed.

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 any 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 meetings of the creditors and 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.

Powers of Court where no committee of inspection.

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**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,

Constitution  
and  
proceedings  
of committee  
of inspection.  
U.K. s. 253.  
N.S.W. s. 239.  
Vic. s. 182.  
Qsld. s. 209.  
S.A. s. 221.  
W.A. s. 211.  
Tas. s. 187.

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 they 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 their members present at a meeting, but shall not act unless a majority of the committee 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 the committee becomes bankrupt or assigns his estate for the benefit of his creditors or makes an arrangement with his creditors pursuant to the law of the Commonwealth relating to bankruptcy or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of contributories, if he represents contributories, of which meeting seven days' notice has been given stating the object of the meeting.

(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 subsection (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 subsection (7) of this section and the meeting may confirm the appointment or revoke the appointment and appoint another creditor or contributory or person holding a general

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power or special authority as specified in subsection (1) of this section, as the case requires, in his stead.

(9) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

*Subdivision (4)—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 every order made under this section shall be lodged by the company with the Registrar within fourteen days after the making of the order.

Penalty : Fifty pounds. Default penalty.

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 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 subsection (1) of this 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 shall be *prima facie* evidence of the liabilities of the persons named therein as contributories.

**s. 244.** In *re* MURRAY ENGINEERING COMPANY LIMITED (1925) S.A.S.R. 330; 3 Austr. Digest 1020. The settling of the list of contributories should be carried out at a definite and stated time and place when the alleged contributories are to have an opportunity of showing cause. Explanation of the meaning of "settling" the list of contributories.

In *re* CHARMS LIMITED—CHALK'S CASE (1932) S.A.S.R. 341; 3 Austr. Digest 1019. The liquidator is not deprived of the benefit of section 224 (3) of the Companies Act, 1892, because he puts inconclusive facts in evidence to establish the liability of a contributory.

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**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.

Delivery of property to liquidator.

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.

(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 Act, and may—

Payment of debts due by contributory to company, and extent to which set-off allowed.

- (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—

Power of Court to make calls.

- (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 some bank named in such order to the

Payment into bank of moneys due to company.

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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 any bank pursuant to this Division shall be subject in all respects to orders of the Court.

Order on contributory conclusive evidence.

(6) An order made by the Court under this section shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due, 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 interest 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 which 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.

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**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. 235.  
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. ss. 235, 236.  
W.A. s. 224.  
Tas. s. 198.

(2) The Court may examine him on oath concerning the matters mentioned in subsection (1) of this 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 section 250 may, if the Court so directs and subject to the rules, be held before the Master or other officer of the Supreme Court or a special magistrate named for the purpose by the Court, and the powers of the Court under this section and section 250 may be exercised by such Master, officer or special magistrate as the case may be.

(5) Any person summoned before the Court, Master, officer or 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 Master, officer or magistrate, as the case may be, deems just for the purpose of enabling him to explain or qualify any answers given by him.

(6) If any person so summoned, after being tendered a reasonable sum for his expenses, fails or refuses to come before the Court, Master, officer or magistrate at the time appointed not having a lawful excuse made known to and allowed by the Court, Master, officer or magistrate at the time of the sitting the Court may cause him to be apprehended and brought before the Court, Master, officer or magistrate as the case may be for examination.

## PART X.

## DIVISION II.

Power to  
order public  
examination of  
promoters,  
directors, etc.  
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 any person in the promotion or formation of the company or by any 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 subsection (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.

**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 State or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested and his books and papers and movable personal property to be seized and him and them to be safely kept until such time as the Court orders.

Power to  
arrest  
absconding  
contributory.  
U.K. s. 271.  
N.S.W. s. 256.  
Vic. s. 191.  
Qsld. s. 225.  
S.A. s. 238.  
W.A. s. 227.  
Tas. s. 201.

**252.** Provision may be made by rules 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,

Delegation to  
liquidator of  
certain powers  
of Court.  
U.K. s. 273.  
N.S.W. s. 257.  
Vic. s. 192.  
Qsld. s. 227.  
S.A. s. 240.  
W.A. s. 229.  
Tas. s. 202.

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 the special leave of the Court rectify the register of members and shall not make any calls without either the special leave of the Court or the sanction of the committee of inspection.

**253.** Any powers by this Act conferred on the Court shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company or the estate of any contributory or debtor for the recovery of any call or other sums.

Powers of  
Court  
cumulative.  
U.K. ss. 272,  
277.  
N.S.W. s. 257.  
Vic. s. 194.  
Qsld. ss. 226,  
230.  
S.A. s. 239.  
W.A. s. 228.  
Tas. ss. 204,  
205.

## PART X.

## DIVISION III.

## DIVISION III.—VOLUNTARY WINDING UP

*Subdivision (1)—Introductory*

Company may  
be wound up  
voluntarily.

U.K. ss. 278,  
279.  
N.S.W. ss. 260,  
261.  
Qld. ss. 231,  
234.  
Vic. s. 195.  
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 a copy of the resolution together with notice thereof in the prescribed form; and

(b) within ten days after the passing of the resolution give notice of the resolution in the *Government Gazette*.

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

Penalty: Fifty pounds. Default penalty.

Commence-  
ment 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 shall commence 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. s. 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 shall, 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, shall be 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) Subject to subsection (3) of section 366, a declaration so made shall have no effect for the purposes of this Act unless it is—

- (a) made at the meeting of directors referred to in subsection (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 shall be guilty of an offence against this Act.

Penalty : Imprisonment for six months or five hundred pounds 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 (2)—Provisions applicable only to Members'  
Voluntary Winding Up.*

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 shall cease except so far as the liquidator or the

Liquidators.  
U.K. ss. 285,  
286.  
N.S.W. ss. 267  
268.  
Vic. s. 190.  
Qld. ss. 238,  
239.  
S.A. ss. 249,  
250.  
W.A. ss. 238,  
239.  
Tas. s. 210.

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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 a 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 Act or by the articles or in such manner as is on application by any contributory or by the continuing liquidators determined by the Court.

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 257 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 and the notice summoning the meeting shall draw the attention of the creditors to the right conferred upon them by subsection (2) of this section.

(2) The creditors may, at the meeting summoned under subsection (1) of this 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 subsection (2) of this section the winding up shall thereafter proceed as if the winding up were a creditors' voluntary winding up.

(4) The liquidator shall within seven days after a meeting has been held pursuant to the provisions of subsection (1) of this section lodge with the Registrar a notice in the prescribed form and if default is made in complying with this subsection the liquidator shall be guilty of an offence against this Act.

Penalty : One hundred pounds. Default penalty.

Alternative provisions as to annual and final meetings in case of insolvency.

(5) Where the liquidator has convened a meeting under subsection (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 shall not be required to summon an annual meeting of creditors at the end of the first year after the commencement of the winding up if the meeting held under subsection (1) of this section was held less than three months before the end of that year.

*Subdivision (3)—Provisions applicable only to Creditors'  
Voluntary Winding Up.*

**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 voluntary winding up is to be proposed, and shall cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company.

Meeting of  
creditors.

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.

(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 clear 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 *Government Gazette* and in a daily newspaper circulating generally throughout the State.

(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 subsection (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 shall be final.

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(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 shall have 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 any officer of the company who is in default shall be guilty of an offence against this Act.

Penalty : One hundred pounds.

## Liquidators.

U.K. ss. 204,  
296, 297.  
N.S.W. s. 274.  
Vic. s. 202.  
S.A. ss. 256,  
258, 259.  
Qld. ss. 246,  
247, 248.  
Tas. s. 213.  
W.A. s. 245.

**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, and if no person is nominated by the creditors the person nominated by the company shall be liquidator.

(2) Notwithstanding the provisions of subsection (1) of this 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 all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee the creditors, 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 the 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.

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## 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 259 or section 260 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 but not more than five as it thinks fit to act as members of the committee.

(2) Notwithstanding the provisions of subsection (1) of this 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 shall not, unless the Court otherwise directs, be qualified to act as members of the committee, and on any application to the Court under this subsection 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 (3) of Division II of this Part relating to the proceedings of and vacancies in committees of inspection shall apply with respect to a committee of inspection appointed under this section.

**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 shall be void.

Property and proceedings.  
 Vic. s. 204.  
 Qld. ss. 177, 179, 212.  
 W.A. s. 274.  
 Tas. s. 215.

(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 or books and papers in his hands to which the company is *prima facie* entitled.

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## DIVISION III.

*Subdivision (4)—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 Act as to preferential payments, the property of a 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.

Appoint-  
ment of  
liquidator.

U.K. s. 304.  
N.S.W. s. 284.  
Vic. s. 206.  
Qld. s. 255.  
S.A. s. 266 (1).  
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.

U.K. s. 304.  
N.S.W. s. 284.  
Vic. s. 206.  
S.A. s. 266 (2).  
Qld. s. 255.  
W.A. 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.** Any 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 shall be final and conclusive.

- s. 264. In *re* THE MALAKOFF GOLD MINING COMPANY NO LIABILITY (1884) 18 S.A.L.R. 20. In *re* ROYAL MINT AND IRON KING GOLD MINING CO. NO LIABILITY 13th November, 1895, S.A. *Advertiser* (newspr.). Held, in both cases (under the Companies Act, 1864), that in winding up a no-liability company the surplus assets should be distributed amongst the shareholders in proportion to the contribution per share that shareholders made to the capital.
- In *re* FEDERAL BANK OF AUSTRALIA, 8th September, 1894, S.A. *Register* (newspr.); 3 Austn. Digest 1066. Held that South Australian legislation does not affect the rights of foreign creditors as compared with local creditors to share in the distribution of the assets of a banking company being wound up in South Australia.
- In *re* THE IVANHOE SOUTH EXTENDED GOLD MINING COMPANY (1900) S.A.L.R. 53. Held that a provision in the articles providing that on a winding-up surplus assets should be distributed among the members in proportion to the number of shares held by them without regard to the amount paid up, and that in ascertaining surplus assets no deduction should be made for repayment of paid up capital, was valid.
- In *re* THE ROYAL MINT AND IRON KING GOLD MINING COMPANY (1900) S.A.L.R. 58. Held that in the winding up of a no-liability company under the Companies Act, 1892, the surplus assets should be applied in repayment of capital contributed, and any residue should be divided between the shareholders in proportion to the number of shares held, irrespective of the amounts paid up.
- RYAN V. EDNA MAY JUNCTION GOLD MINING COMPANY NO LIABILITY (1916) 21 C.L.R. 487; 22 A.L.R. 222; 3 Austn. Digest 906. Where the notice of the meeting called to consider winding-up failed to state the special reason for winding-up, upon which the mode of distribution of the surplus assets depended, held that the assets should be distributed as if the special reason did not exist.
- SOUTHERN CROSS ASSURANCE COMPANY LIMITED V. SHAREHOLDERS' PROTECTION ASSOCIATION LIMITED AND ANOTHER (1935) S.A.S.R. 50. [Leave to appeal to High Court refused (1935) 54 C.L.R. 709.] *Quaere* whether a judgment for damages for libel and maintenance would be a liability within the meaning of section 152 of the Companies Act, 1892.

**268.** (1) The acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

(2) Any conveyance, assignment, transfer, mortgage, charge or other disposition of a company's property made by a liquidator shall, notwithstanding any defect or irregularity affecting the validity of the winding up or the appointment of the liquidator, be 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 any 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.

**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 and, 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 subsection (1) of section 236 to a liquidator in a winding up by the Court ;
- (b) exercise any of the other powers by this Act given to the liquidator in a winding up by the Court ;
- (c) exercise the power of the Court under this Act of settling a list of contributories, and the list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories ;
- (d) exercise the power of the Court of making calls ;
- (e) exercise the power of the Court of fixing a time within which debts and claims must be proved ; or
- (f) 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.

Powers and  
duties of  
liquidator.

U.K. s. 303.  
N.S.W. s. 283.  
Vic. s. 207.  
Qsld. s. 264.  
S.A. s. 265.  
W.A. s. 254.  
Tas. s. 218.

s. 269. In *re* MURRAY ENGINEERING COMPANY LIMITED (1925) S.A.S.R. 330; 3 Austn. Digest 1020. Explanation of the meaning of "settling" the list of contributories. The settling must be carried out at a definite and stated time and place when the alleged contributories are to have an opportunity of showing cause.

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(3) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as is determined at the time of their appointment, or in default of such determination by any number not less than two.

Power of liquidator to accept shares etc., 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. ss. 251,  
260.  
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 shall be 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 registered 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 shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but if an order for winding up the company by the Court is made within a year after the passing of the resolution, the resolution shall not be valid unless sanctioned by the Court.

(5) For the purposes of an arbitration under this section the Arbitration Act, 1891-1934, shall apply 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

s. 270. In *re* F. H. RING & Co. LIMITED (1924) S.A.S.R. 138; 3 Austn. Digest 643. Section 173 of the Companies Act, 1892, did not empower a company to make an arrangement whereby individual shareholders would be bound to accept liabilities in other companies.

one liquidator then 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 shall be 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.

**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 after 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.

Annual meeting of creditors.  
U.K. ss. 289, 299.  
N.S.W. ss. 270, 279.  
Vic. s. 209.  
Qsld. s. 241.  
S.A. ss. 252, 261.  
W.A. s. 250.  
Tas. s. 220.

(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) Every liquidator who fails to comply with this section shall be guilty of an offence against this Act.

Penalty: One hundred pounds. Default penalty.

**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 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.

Final meeting and dissolution.  
U.K. ss. 290, 300.  
N.S.W. ss. 271, 280.  
Vic. s. 210.  
Qsld. s. 242.  
S.A. ss. 253, 262.  
W.A. s. 251.  
Tas. s. 221.

(2) The meeting shall be called by advertisement published in the *Government Gazette* and in a daily newspaper circulating generally throughout the State which 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 shall be guilty of an offence against this Act.

Penalty: Fifty pounds. Default penalty.

(4) The quorum at a meeting of the company shall be two and at a meeting of the company and the creditors shall be two

members and two creditors and if the quorum is not present at the meeting, the liquidator shall in lieu of the return mentioned in subsection (3) of this 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 subsection (3) of this 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 company shall, by force of this section, be dissolved.

(6) Notwithstanding the provisions of subsection (5) of this 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 shall be guilty of an offence against this Act.

Penalty : Fifty pounds. Default penalty.

(8) If the liquidator fails to call a meeting as required by this section he shall be guilty of an offence against this Act.

Penalty : One hundred pounds. Default penalty.

**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) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by 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) Any 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) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the Court against it, and the Court may thereupon as it thinks just amend, vary or confirm the arrangement.

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**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.

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.

(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.** (1) All proper costs, charges and expenses of and incidental to the winding up including the remuneration of the liquidator shall be payable out of the assets of the company in priority to all other claims.

Costs.

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.

(2) The costs and expenses of winding up include—

- (a) the costs and fees of any solicitor retained by the company ; and
- (b) such fees of any registered company auditor retained by the company as are fixed by the Board,

for such services as are rendered by that solicitor or auditor preparatory to, in the course of, and incidental to, the winding up of the company.

**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.

s. 274. *INGLEWOOD MINING VENTURE LIMITED v. PRICE* (1872) 6 S.A.L.R. 2; 3 Austn. Digest 1029. Held that the purpose of the section is to enable the help of the court to be invoked if difficulties arise and that the section does not deprive the liquidator of his right to bring an action for unpaid calls.

In the matter of the *COMMERCIAL BANK OF SOUTH AUSTRALIA LIMITED IN LIQUIDATION* (1889) 23 S.A.L.R. 102; 3 Austn. Digest 1044. The rule as to the appearance of parties on applications by liquidators applies only to litigious proceedings, and not to administrative proceedings where the liquidators are seeking advice from a judge before taking action.

In *re GOLDEN BUTTERFLY GOLD MINING COMPANY NO LIABILITY* (1916) S.A.L.R. 177. The principles on which the court should order a stay of proceedings in a voluntary winding-up explained.

*SOUTHERN CROSS ASSURANCE COMPANY LIMITED v. SHAREHOLDERS' PROTECTION ASSOCIATION* (1935) S.A.S.R. 50. Where there was a possibility that the assets of the company might be sufficient to pay the possible debts, the court ordered that an order under section 154 of the Companies Act, 1892, staying action against company in liquidation, be set aside.

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DIVISION IV.—PROVISIONS APPLICABLE TO EVERY MODE OF  
WINDING UP.

*Subdivision (1)—General.*

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.

**277.** Every 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.

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.

**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 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.

(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 any 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.

Appeal against decision of liquidator.

N.S.W. s. 232 (5).  
Vic. s. 175 (5).  
S.A. s. 303.

**279.** Any 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.

Notice of appointment and address of liquidator.

U.K. s. 305.  
N.S.W. s. 294.  
Vic. s. 206.  
Qld. s. 256.  
S.A. ss. 210 (6), 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 of the provisions of this section he shall be guilty of an offence against this Act.

Penalty: Fifty pounds. Default penalty.

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Liquidator's  
accounts.

U.K. s. 249.  
N.S.W. s. 316.  
Vic. ss. 178,  
232.  
Qsld. s. 205.  
S.A. ss. 217,  
298.  
W.A. s. 207.  
Tas. s. 183.

**281.** (1) Every liquidator shall, within one month after the expiration of the period of six months from the date of his appointment and 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 and verified by statutory declaration an account of his receipts and payments during each such period of six months, or, where he ceases to act as liquidator or obtains an order of release, 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 requires, up to the date of his so ceasing or obtaining such order, together with a statement of the position in the winding up.

Penalty : Fifty pounds. Default penalty.

(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 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 next forwarding 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 be part of the expenses of winding up.

**282.** (1) If any 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) Any order made under subsection (1) of this section may provide that all costs of and incidental to the application shall be borne by the liquidator.

Liquidator to  
make good  
defaults.

U.K. s. 387.  
N.S.W. s. 312.  
Vic. s. 229.  
Qsld. s. 288.  
S.A. s. 294.  
W.A. s. 285.  
Tas. s. 240.

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(3) Nothing in subsection (1) of this section shall prejudice the operation of any enactment imposing penalties on a liquidator in respect of any such default.

Notification that a company is in liquidation.

U.K. s. 338.  
N.S.W. s. 313.  
Vic. s. 230.  
Qsld. s. 289.  
S.A. s. 295.  
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 every officer of the company or liquidator and every receiver or manager who knowingly and wilfully authorizes or permits the default, shall be guilty of an offence against this Act.

Penalty : Twenty pounds.

Books of company.

U.K. ss. 340,  
341.  
N.S.W. ss. 314,  
315.  
Vic. s. 231.  
Qsld., 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 shall as between the contributories of the company be *prima facie* 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 subsection (1) of this 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 subsection (2) of this section, when a company has been wound up, the books and papers referred to in subsection (1) of this section may, if the Court so orders, be destroyed within a period of five years after the dissolution of the company.

(4) No responsibility shall rest 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 any 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 issued by the Government of the Commonwealth or 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 the securities as is necessary.

**286.** (1) Where a liquidator has in his hands or under his control—

- (a) any unclaimed dividend or other moneys which have remained unclaimed for more than six months from the date when the dividend or other moneys became payable ; or
- (b) after making a final distribution, any unclaimed or undistributed moneys arising from the property of the company,

Unclaimed  
assets.  
U.K. s. 343.  
N.S.W. s. 317.  
Vic. s. 234.  
Qld. s. 203.  
S.A. s. 209.  
W.A. s. 200.  
Tas. s. 245.

he shall forthwith pay those moneys to the Registrar to be placed to the credit of an account to be kept by the Registrar and called the "Companies Liquidation Account" and shall be entitled to the prescribed certificate of receipt for the money so paid and that certificate shall be an effectual discharge to him in respect thereof.

(2) The Court may at any time on the application of the Registrar order any liquidator to submit to it an account of any unclaimed or undistributed funds, dividends or other moneys in his hands or under his control verified by affidavit and may direct an audit thereof and may direct him to pay those moneys to the Registrar to be placed to the credit of the Companies Liquidation Account.

(3) The Registrar may invest the whole or part of the moneys standing to the credit of the Companies Liquidation Account in the purchase of Government debentures or stock, or otherwise, and the Treasurer may direct what percentage of the interest arising from the investment of the moneys standing to the credit of that account shall be paid into the Consolidated Revenue to recoup any necessary expenses, and the remainder of the interest shall be paid to the credit of the account.

(4) For the purposes of this section the Court may exercise all the powers conferred by this Act with respect to the discovery and the realization of the property of the company and

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the provisions of this Act with respect thereto shall, with such adaptations as are prescribed, apply to proceedings under this section.

(5) The provisions of this section shall not, except as expressly declared in this Act, deprive any person of any other right or remedy to which he is entitled against the liquidator or any other person.

(6) If any claimant makes any demand against the Registrar for any money placed to the credit of the Companies Liquidation Account, the Registrar, upon being satisfied that the claimant is entitled to the money, shall make an order for the payment thereof to be made to him out of the Account, or, if it has been paid into the Consolidated Revenue, the Treasurer of the State may direct payment of a like amount to be made out of moneys made available by Parliament for the purpose.

(7) Any person dissatisfied with the decision of the Registrar or the Treasurer in respect of a claim made in pursuance of subsection (6) of this section may appeal to the Court which may confirm, disallow or vary the decision.

(8) Where any unclaimed moneys paid to any claimant are afterwards claimed by any other person, the Registrar or the Treasurer shall not be responsible for the payment of the moneys but such person may have recourse against the claimant to whom the Registrar or the Treasurer has paid them.

(9) Any unclaimed moneys and any interest arising from the investment thereof paid to the credit of the Companies Liquidation Account to the extent to which the moneys have not been under this section paid out of the Account shall, on the lapse of six years from the date of the payment of the moneys to the credit of the Account, be paid in to the Consolidated Revenue.

Expenses of winding up where assets insufficient.

N.S.W. s. 316  
Vic. s. 235.  
E.A. s. 383.  
Tas. s. 246.

**287.** (1) Unless expressly directed to do so by the Registrar, a liquidator shall not be liable to incur any expense in relation to the winding up of a company unless there are sufficient available assets.

(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.

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.

**288.** Subject to subsection (9) of section 260, 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.

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Meetings to ascertain wishes of creditors or contributories.

U.K. s. 346.  
N.S.W. s. 319.  
Vic. s. 237.  
Qsld. s. 295.  
S.A. s. 301.  
W.A. s. 292.  
Tas. s. 248.

**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 called, held and conducted in such manner as the Court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the Court.

(2) In the case of creditors regard shall be had to the value of each creditor's debt.

(3) In the case of contributories regard shall be had to the number of votes conferred on each contributory by this Act or the articles.

**290.** (1) The Court may appoint commissioners, either generally or for any specific matter, 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 any person so appointed commissioner.

Special commission for receiving evidence.

U.K. s. 348.  
Vic. s. 233.  
S.A. s. 302.  
W.A. s. 293.  
Tas. s. 249.

(2) Every commissioner shall have in the matter so referred to him the same powers as the Court of summoning and examining witnesses, of requiring the production or delivery of documents, of punishing defaults by witnesses, and of allowing costs, charges and expenses to witnesses.

(3) Unless otherwise ordered by the Court the taking of evidence by commissioners shall be in open court and 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 (2)—Proof and Ranking of Claims.*

**291.** (1) In every winding up, subject in the case of insolvent companies to the application in accordance with the provisions of this Act of the law of 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, shall be admissible to proof against the company, a just estimate being made so far as possible of the value of such debts or claims as are subject to any contingency or sound only in damages or for some other reason do not bear a certain value.

Proof of debts.

U.K. ss. 316  
317.  
N.S.W. ss. 295,  
296.  
Vic. s. 215.  
Qsld. ss. 270,  
272.  
S.A. ss. 277  
278.  
W.A. ss. 268,  
269.  
Tas. s. 226.

(2) Subject to section 292, in the winding up of an insolvent company the same rules shall prevail and be observed with

s. 289. In *re* FEDERAL BANK OF AUSTRALIA, 2nd March, 1895, S.A. *Advertiser* (newspr.); 3 Austn. Digest 1059. Where the South Australian liquidation of a company is ancillary to the principal liquidation, held (under the Companies Act, 1892) that the wishes of all the creditors must be considered.

s. 291. (2) (Formerly Supreme Court Act, 1878, section 6 (1).) In *re* MILLIGEN'S LIMITED 1934) S.A.S.R. 72. Sections 92 and 93 of the Commonwealth Bankruptcy Act, 1924, are not imported into the winding-up of a company under this section.

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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. 279.  
W.A. s. 271.  
Tas. s. 227.

**292.** (1) Subject to the provisions of this Act, 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 224, the remuneration of the liquidator and the costs of any audit carried out pursuant to section 281 ;
- (b) secondly, all wages or salary (whether or not earned wholly or in part by way of commission not being an overriding commission) including any amount payable by way of allowance or reimbursement under any contract of employment or award or agreement regulating conditions of employment, of any employee not exceeding Five hundred pounds whether for time or piecework in respect of services rendered by him to the company within a period of six months before the commencement of the winding up ;
- (c) thirdly, all amounts due in respect of workmen's compensation under the Workmen's Compensation Act, 1932, as amended, and 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 sick leave or all three, 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

s. 292. In *re* COMMONWEALTH AGRICULTURAL SERVICE ENGINEERS LIMITED (1928) S.A.S.R. 342; 3 Austn. Digest 874; 6 Austn. Digest 51, 52. Held under the Companies Act, 1892, that debts due to the Department of Agriculture and to the Railways Commissioner and to the Governments of other Australian States took priority in winding-up as debts due to the Crown. Effect of a debenture covering assets of company in another State, and registered in South Australia, but not in the other State, considered.

In *re* MILLIGEN'S LIMITED (1934) S.A.S.R. 72. Held (on the construction of sections 151, 152, and 170 of the Companies Act, 1892), that claims properly incurred by a liquidator in the course of a winding-up have priority over claims arising before the liquidation, except secured debts and Crown debts. Crown debts have priority over all other unsecured debts.

(e) fifthly, the amount of all 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 all land tax and income tax assessed under any Act or Act 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 or Act of the Commonwealth or law 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 subsection (1) of this section shall 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 any payment has been made to any 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 shall, in a winding up, have 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 shall have the same right of priority in respect of that amount as the employee would have had if the payment had not been made.

(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 subsection (1) of this section and any amount payable in priority by virtue of subsection (3) of this section, those debts shall 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 (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 subsection (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 nothing in subsection (5) of this section shall limit the rights of the third party in respect of the balance.

(7) The provisions of subsection (5) and subsection (6) of this section shall have effect notwithstanding any agreement to the contrary entered into after the commencement of this Act.

(8) Notwithstanding anything in subsection (1) of this section—

(a) paragraph (c) of that subsection shall 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 workmen's compensation ; and

(b) where a company has given security for the payment or repayment of any amount to which paragraph (c) of that subsection relates, that paragraph shall apply 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 (3)—Effect on other Transactions.*

**293.** (1) Any transfer, mortgage, 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 shall, in the event of the company being wound up, be void or voidable in like manner.

Undue preference.  
U.K. s. 320.  
N.S.W. s. 208.  
Vic. s. 217.  
Qsld. s. 275.  
S.A. s. 281.  
W.A. s. 273.  
Tas. s. 228.

(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) Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.

**294.** A floating charge on the undertaking or property of the company created within six months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be 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.

Effect of floating charge.  
U.K. s. 322.  
Vic. s. 218.  
Qsld. s. 276.  
S.A. s. 282.  
W.A. s. 275.  
Tas. s. 229.

- s. 293. *MICHELL AND OTHERS V. BOOTH AND ANOTHER* (1928) S.A.S.R. 367; 3 *Austn. Digest* 1048, 1051. Where the directors of a company, knowing that the company was unable to pay its debts, allowed moneys due by the company to be appropriated to the balance of calls outstanding in respect of certain shares of the company held by the creditors, it was held that a fraudulent preference had been made. Nature of fraudulent preference discussed.
- s. 294. *In re CHARLES ATKINS & COMPANY LIMITED—VERCO BUILDINGS LIMITED v. C.A. & CO. LIMITED* (1929) S.A.S.R. 129; 3 *Austn. Digest* 867. Where the trust deed was registered more than six months before liquidation, but the debentures within six months before liquidation, held that the debentures were not invalidated.
- In re TYRRELL'S LIMITED* (1929) S.A.S.R. 450; 3 *Austn. Digest* 874. Where an oral agreement for a charge over the company's assets was made more than six months before liquidation, and was followed by a debenture given within six months before liquidation—held (under section 17 of 1619 of 1924) that the debenture was void, and the oral charge was not revived by the invalidity.

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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 company first mentioned in this subsection,

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.

**296.** (1) Where any part of the property of a company consists of—

- (a) any 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

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. 280.

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 shall operate to determine, as from the date of disclaimer, the rights, interest and liabilities of the company and the property of the company in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The Court or committee, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the Court or committee thinks just.

(4) The liquidator shall not be 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 any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing such persons as it thinks fit, make an order for the vesting of the property in or the delivery

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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 as aforesaid, 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 under The Real Property Act, 1886-1936, as amended, upon an office copy thereof being lodged with the Registrar-General and upon an entry of a memorandum thereof being made in the Register Book kept under that Act and on the duplicate grant or certificate of title, if any, or, if the order relates to any other land, upon an office copy thereof being lodged with the Registrar-General of Deeds, the property comprised therein shall vest accordingly in the person therein named in that behalf without any further conveyance or assignment.

(7) Notwithstanding anything in subsection (6) of this 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 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 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, encumbrances and interest created therein by the company.

(8) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up.

Interpretation.  
Vic. s. 221(3).  
Qld. ss. 278,  
(3), 279 (3).  
S.A. s. 284 (3).

**297.** For the purposes of section 298 and section 299,

“goods” includes all chattels personal ;

“sheriff” includes any officer charged with the execution of a writ or other process.

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**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 shall not be 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 shall in all cases acquire a good title to them against the liquidator ; and
  - (c) the rights conferred by this subsection on the liquidator may be set aside by the Court in favour of the creditors 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.

**299.** (1) Subject to the provisions of subsection (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 or 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 subsection (3) of this section, 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

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.

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.

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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 (4)—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) Every 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 fraudulently removed any part of the property of the company to the value of ten pounds or upwards ;
  - (iii) has concealed, destroyed, mutilated or falsified, or has been privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to the property or affairs of the company ;
  - (iv) has made or has been privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company ;

- (v) has fraudulently parted with, altered or made any omission in, or has been privy to fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company ;
- (vi) by any false representation or other fraud, has obtained any property for or on behalf of the company on credit which the company has not subsequently paid for ;
- (vii) has obtained on credit, for or on behalf of the company, under the false pretence that the company is carrying on its business, any property which the company has not subsequently paid for ;  
or
- (viii) has pawned, pledged or disposed of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing was in the ordinary 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,

shall be guilty of an offence against this Act.

Penalty : Imprisonment for two years.

(2) It shall be a good defence to a charge under paragraph (a), (b) or (d) or sub-paragraph (i), (vii) or (viii) of paragraph (c) of subsection (1) of this section if the accused proves that he had no intent to defraud, and to a charge under paragraph (f)

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or sub-paragraph (iii) or (iv) of paragraph (c) of subsection (1) of this section if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(3) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under sub-paragraph (viii) of paragraph (c) of subsection (1) of this section every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in those circumstances shall be guilty of an offence against this Act.

Penalty : Imprisonment for two years.

Inducement to  
be appointed  
liquidator.

U.K. s. 336.  
Vic. s. 229 (2).

S.A. Rule  
139 under  
Companies Act,  
1934.

**301.** (1) Any person who gives or agrees or offers to give to any member or creditor of a company any valuable consideration with a view of securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator shall be guilty of an offence against this Act.

Penalty : One hundred pounds.

Penalty for  
falsification  
of books.

U.K. s. 329.  
N.S.W. s. 304.  
Vic. s. 223.  
Qld. s. 281.  
S.A. s. 287.  
W.A. s. 279.  
Tas. s. 234.

(2) Every officer or contributory of any company being wound up who destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register or book of account or document belonging to the company with intent to defraud or deceive any person shall be guilty of an offence against this Act.

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.** Every 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,

shall be guilty of an offence against this Act.

Penalty : Imprisonment for two years.

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Liability where proper accounts not kept.

U.K. s. 331.  
N.S.W. s. 306.  
Vic. s. 225.  
Qld. s. 283.  
S.A. s. 290.  
W.A. s. 280.  
Tas. s. 236.

**303.** (1) If, on an investigation under any other Part 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 person who is or was an officer of the company and who was knowingly a party to or had authorized or permitted the default by the company shall, unless he acted honestly and shows that, in the circumstances in which the business of the company was carried on, the default was excusable, be guilty of an offence against this Act.

Penalty : Imprisonment for one year or two hundred pounds.

(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 shall be guilty of an offence against this Act.

Liability for contracting debt which company had no reasonable expectation of paying.

Penalty : Imprisonment for three months or one hundred pounds.

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Responsibility  
for fraudulent  
trading.

U.K. s. 332.  
N.S.W. s. 307.  
Vic. s. 226.  
Qsld. 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 shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Court directs.

(2) Where the Court makes any declaration pursuant to subsection (1) of this section, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make provision for making the liability of any person under the declaration a charge on any debt or obligation due from the company to him, or on any charge or any interest in any charge on any assets of the company held by or vested in him or any corporation or person on his behalf, or any person claiming as assignee from or through the person liable or any corporation or person acting on his behalf, and may from time to time make such further order as is necessary for the purpose of enforcing any charge imposed under this subsection.

(3) For the purpose of subsection (2) of this section "assignee" includes any person to whom or in whose favour by the directions of the person liable, the debt, obligation, or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters 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 subsection (1) of this section, every person who was knowingly a party to the carrying on of the business with that intent or purpose shall be guilty of an offence against this Act.

Penalty : Imprisonment for one year.

(5) The provisions of this section shall 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 subsection (1) of this section the liquidator may himself give evidence or call witnesses.

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**305.** (1) If in the course of winding up it appears that any person who has taken part in the formation or promotion of the company or any past or present liquidator or officer has misapplied or retained or become liable or accountable for any money or property of the company or been guilty of any misfeasance or breach of trust in relation to the company, the Court may on the application of the liquidator or of any creditor or contributory examine into the conduct of 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 shall extend and apply to and in respect of the receipt of any money or property by any officer of the company during the two years preceding the commencement of the winding up whether by way of salary or otherwise appearing to the Court to be unfair or unjust to other members of the company.

(3) The provisions of this section shall have effect notwithstanding that the offence is one for which the offender is criminally liable.

**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 Minister.

(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 any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter to the Minister and shall, in respect of information or documents in his possession or under his control which relate to the matter in question, furnish the Minister 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 any 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.

Power of Court to assess damages against delinquent officers, etc.

U.K. s. 333.  
N.S.W. s. 308  
Vic. s. 227.  
Qld. s. 255.  
S.A. s. 291.  
W.A. s. 282.  
Tas. s. 238.

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.

(4) Where any report is made under subsection (2) or subsection (3) of this section the Minister 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 Act 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 Minister 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 as aforesaid and that no report with respect to the matter has been made by the liquidator to the Minister, 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 subsection (2) of this section.

(6) If, where any matter is reported or referred to the Minister 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, whether past or present, other than the defendant in the proceedings, shall give the Minister or Registrar all assistance in connection with the prosecution which he is reasonably able to give.

(7) For the purpose of subsection (6) of this 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 an officer of the company.

(8) If any person fails or neglects to give assistance in manner required by subsection (6) of this section, the Court may on the application of the Minister or Registrar direct that person to comply with the requirements of that subsection, and where any application is made under this subsection 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 Minister 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 out of moneys provided by Parliament.

(10) Subject to any direction given under subsection (9) of this section and to any charges on the assets of the company and any debts to which priority is given by this Act, all such costs and expenses shall be payable out of those assets as part of the costs of winding up.

*Subdivision (5)—Dissolution.*

**307.** (1) Where a company has been dissolved the Court may at any time within two years after the date of dissolution, on 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.

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. 296.  
Tas. s. 251.

(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 shall be guilty of an offence against this Act.

Penalty: Fifty pounds. Default penalty.

**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 and 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 *Government Gazette* with a view to striking the name of the company off the register.

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.

(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 *Government 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 therein 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 II 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 *Government Gazette* and send to the company or the liquidator, if any, a notice to the same effect as that referred to in subsection (2) of this section.

(4) At the expiration of the time mentioned in the notice 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 *Government Gazette*, and on the publication in the *Government Gazette* of this notice the company shall, by force of this section, be dissolved; but

(a) the liability, if any, of every officer and member of the company shall continue and may be enforced as if the company had not been dissolved; and

(b) nothing in this subsection shall affect the power of the Court to wind up a company the name of which has been struck off the register.

(5) If any person feels aggrieved by the name of the company having been struck off the register, the Court on an application made by the person at any time within fifteen years after the name of the company has been so struck off may, if satisfied that the company was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the name of the company 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, may be sent to each of the persons who subscribed the memorandum of the company addressed to him at the address mentioned in the memorandum.

PART X.  
DIVISION IV.

**309.** (1) Where after a company has been dissolved it is proved to the satisfaction of the Registrar—

- (a) that the company if still existing would be legally or equitably bound to carry out, complete or give effect to some dealing, transaction or matter ; and
- (b) that in order to carry out, complete or give effect thereto some purely administrative act, not discretionary, should have been done by or on behalf of the company, or should be done by or on behalf of the company, if still existing,

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 shall have the same force, validity and effect as if the company if existing had duly executed such instrument or document.

**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 State, which was vested in the company or to which it was entitled, or over which it had a disposing power at the time it was so dissolved, but which was not got in, 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 sections 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 Act 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.

**311.** (1) Upon proof to the satisfaction of the Registrar that there is vested in him by operation of section 310 or by operation of any corresponding previous enactment or of a law of a proclaimed State corresponding with section 318 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.

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.

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.

Outstanding interests in property how disposed of.  
N.S.W. s. 326.  
Vic. s. 244.  
S.A. ss. 303, 309.  
W.A. s. 299.  
Tas. s. 255.

(2) The Registrar may sell or otherwise dispose of or deal with such property either solely or in concurrence with any other person in such manner for such consideration by public auction, public tender or private contract upon such terms and conditions as he thinks fit, with power to rescind 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 subsection (1) of this section and the amount of such commission shall be paid into the general revenue.

(4) The moneys received by the Registrar in the exercise of any of the powers conferred on him by this Subdivision shall be applied in defraying all costs, expenses, commission and fees incidental thereto and thereafter to any payment authorized by this Subdivision and the surplus, if any, shall be deemed to be money belonging to a trust in his hands within the meaning and operation of section 47 of the Trustee Act, 1936 and he shall pay the same into the Court under that section, and the same shall, subject to rules of Court, be dealt with according to the orders of the Court: But any application for payment out of Court of any such moneys, and any claim, suit or action for or in respect of any such moneys must be made within twenty years after the dissolution of the company, after the expiration of which period all moneys so paid standing to the credit of the company shall, if there be no such application pending, or any order of the Court to the contrary, be passed to the credit and form part of the general revenue.

Liability of  
Registrar and  
Crown as to  
property vested  
in Registrar.  
Vic. s. 245.  
Tas. s. 256.

**312.** Property vested in the Registrar by operation of this Subdivision or by operation of any corresponding previous enactment shall be liable and subject to all charges, claims and liabilities imposed thereon or affecting such property by reason of any statutory provision as to rates, taxes, charges or any other 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 Crown 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.

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## DIVISION IV.

**313.** (1) The Registrar shall—

- (a) record in the register of companies a statement of any property coming to his hand or 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.

(2) The Auditor-General shall have all the powers in respect of such accounts as are conferred upon him by any Act relating to audit of public accounts.

Accounts  
and audit.

N.S.W. s. 323.  
Vic. s. 246.  
S.A. s. 310.  
W.A. s. 301.  
Tas. s. 257.

## DIVISION V.—WINDING UP OF UNREGISTERED COMPANIES.

## DIVISION V.

**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 Act or under any corresponding previous enactment.

“Unregistered  
company.”

U.K. ss. 398,  
404.  
N.S.W. ss. 329,  
334.  
Vic. s. 248.  
Qsld. ss. 359,  
365.  
S.A. ss. 345,  
350, 361a (2),  
362.  
W.A. s. 302.  
Tas. s. 259.

(2) The provisions of this Division shall be in addition to and not in restriction of any provisions contained in this or any other Act with respect to winding up companies by the Court and subject to this Division, those provisions shall apply to the winding up of an unregistered company as if it were a company 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.

Provisions  
of Division  
cumulative.

S.A. ss. 350,  
361a (2).

**315.** (1) Subject to this Division any unregistered company may be wound up under this Part, which Part shall apply to an unregistered company with the following adaptations :—

Winding up  
of unregistered  
companies.

U.K. ss. 399,  
400.  
N.S.W. ss. 71,  
830.  
Vic. s. 249.  
Qsld. s. 360.  
S.A. ss. 346,  
361a (2).  
W.A. s. 303.  
Tas. s. 260.

- (a) The principal place of business of such company in the State shall for all the purposes of the winding up be the registered office of the company.
- (b) No such company shall be wound up voluntarily.
- (c) The circumstances in which the company may be wound up are—
  - (i) if the company is dissolved or has ceased to have a place of business in the State or has a place of business in the State only

s. 315. In the matter of the NORTH AUSTRALIAN TERRITORY COMPANY LIMITED (1889) 23 S.A.L.R. 163; 3 Austn. Digest 929. Order made for winding-up a company possessing property in South Australia but registered in England, notwithstanding that the company was in voluntary liquidation in England.

for the purpose of winding up its affairs or has ceased to carry on business in the State ;

- (ii) if the company is unable to pay its debts ;
- (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 State or by delivering to the secretary or some director, manager or principal officer of the company or by otherwise serving in such manner as the Court approves or directs, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks after the service of the demand neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor ;
- (b) any action or other proceeding has been instituted against any member for any debt or demand due or claimed to be due from the company or from him in his character of member, and, notice in writing of the institution of the action or proceeding having been served on the company by leaving it at its principal place of business in the State 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 State may be wound up as an unregistered company under this Division, so far as its assets in the State are concerned, 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 344.

**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 shall be 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 Act with respect to the personal representatives of deceased contributories and the assignees and trustees of bankrupt contributories respectively shall apply.

**317.** (1) The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order shall, in the case of an unregistered company where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

(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.

**318.** (1) Where an unregistered company the place of incorporation or origin of which is in a proclaimed State has been dissolved and there remains in this State 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,

Contributories  
in winding up  
of unregistered  
company.

U.K. s. 401.  
N.S.W. s. 331.  
Vic. s. 250.  
Qsld. s. 361.  
S.A. s. 347.  
W.A. s. 304.  
Tas. s. 261.

Power of Court  
to stay or  
restrain  
proceedings.

U.K. ss. 402,  
403.  
N.S.W. ss. 332,  
333.  
Vic. s. 251.  
Qsld. ss. 362,  
363.  
S.A. ss. 348,  
349.  
W.A. ss. 305,  
306.  
Tas. s. 262.

Proceedings  
stayed on  
winding up  
order.

Outstanding  
assets of  
defunct  
unregistered  
company.  
Vic. s. 247.

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DIVISION V.

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 the operation 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 this State the provisions of section 309 to section 313 (both inclusive) shall with such adaptations as may be necessary apply in respect of that company.

(3) Where it appears to the Governor that an enactment in force in any State or Territory of the Commonwealth other than this State contains provisions similar to the provisions of this section, he may, by order published in the *Government Gazette*, declare that State or Territory to be a proclaimed State for the purposes of this section.

PART XI.

PART XI.

VARIOUS TYPES OF COMPANIES, ETC.

DIVISION I.

DIVISION I.—NO-LIABILITY COMPANIES.

Application  
of Act 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 Act the provisions of this Act relating to public companies except sections 218 to 220 (both inclusive), 236 (so far as it relates to calls), 244 and subsection (3) of section 245 shall 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, shall 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 person shall not be liable to be sued for any calls or contributions, but he shall not be 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 when payable to the shareholders in any no-liability company shall be 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.

PART XI.  
DIVISION I.

## Calls when due.

N.S.W. s. 44.  
Vic. s. 271.  
Qsld. 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 previous to 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 circulating generally throughout the State ; and
- (b) sent by post to each holder of shares on which the call is made.

**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.

Forfeiture  
of shares.  
N.S.W. s. 44.  
Vic. s. 272.  
S.A. ss. 178 (6),  
179.  
W.A. s. 164.  
Tas. s. 269.

(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 circulating generally throughout the State.

(3) Where a sale is not held owing to error or inadvertence, the sale if held in due course as soon as may be after the discovery of the error or inadvertence shall not be invalid.

(4) If there is any failure to comply with the provisions of this section, the company and every officer of the company who is in default shall be guilty of an offence against this Act.

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 ;

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## DIVISION I.

(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.  
Qsld. s. 313.  
S.A. ss. 179,  
181.  
W.A. s. 165.  
Tas. s. 270.

**324.** (1) The directors may, in the case of any 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 be not made for such share, the share may be withdrawn from sale.

(3) Any 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 shall be 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 shall have any effect upon any forfeited share which is held by or in trust for the company pursuant to this Division, but such share when 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 shall be valid although the specific numbers thereof are not advertised.

(2) In every advertisement it shall be 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) Any 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 from 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 circulating generally throughout the State.

**328.** (1) Notwithstanding anything in this Division any person, if a share belonging to him has been forfeited, may, at any time up to or on the day previous to that upon which it is intended to sell the share, redeem the share by payment to the company of—

Redemption of  
forfeited shares  
N.S.W. s. 44.  
Vic. s. 277.  
S.A. s. 180.  
W.A. s. 166  
Tas. s. 273.

(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 such person shall be entitled to the share as if the forfeiture had not been incurred.

**329.** On the day before that on which a forfeited share is advertised for sale, the company's office shall be open during the hours for which it is by this Act required to be accessible to the public.

Office to be  
open the day  
before sale  
advertised.  
Vic. s. 278.  
Tas. s. 274.

**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.

Distribution of  
surplus.  
N.S.W. s. 44.  
Vic. s. 279.  
Tas. s. 277.

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

**331.** If a no-liability company ceases to carry on business within twelve months of its incorporation, shares issued for cash shall, on a winding up, to the extent of the capital contributed by subscribing shareholders, rank in priority to those issued to vendors or promoters or both for other consideration 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 shall not be 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.

## PART XI.

## DIVISION I.

Restrictions  
on tribute  
arrangements.  
Vic. s. 282.  
Tas. s. 280.

**333.** (1) Without the sanction of a special resolution of the company the directors of a no-liability company shall not—

(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) Subsection (1) of this section shall not preclude 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 II.

Interpretation.  
Vic. s. 284.  
W.A. s. 380.  
Tas. s. 282.

## DIVISION II.—INVESTMENT COMPANIES.

**334.** (1) In this Division unless inconsistent with the context or subject-matter—

“investment company” means a corporation for the time being declared by proclamation of the Governor to be an investment company ; and

“net tangible assets” means tangible assets at book values less total liabilities at book values and less any aggregate amount by which the book value of the marketable securities held by the corporation exceeds their market value.

Proclamation  
of investment  
companies.

(2) The Governor may by proclamation published in the *Government 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, and the Governor may by like proclamation revoke any proclamation declaring a corporation to be an investment company.

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 subsection (2) of this 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.

**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.

Restriction on investments of investment companies.  
Vic. s. 286.  
W.A. s. 382.  
Tas. s. 284.

(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.

**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.

Restriction on underwriting by investment companies.  
Vic. s. 287.  
W.A. s. 383.  
Tas. s. 285.

(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 subsection (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 section 336,

Provisions for unloading securities underwritten and not taken up.

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—

(i) 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

## PART XI.

## DIVISION II.

(ii) 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 of the Commonwealth, the State, any other State of the Commonwealth or New Zealand, trustees are authorized to invest trust funds in their hands; and

“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 subsection (1) of this section.

Not to hold shares in other investment companies.  
Vic. s. 289.  
W.A. s. 385.  
Tas. s. 287.

**339.** No investment company shall 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 other State or 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 specified by proclamation of the Governor published in the *Government Gazette*.

Not to speculate in commodities.  
Vic. s. 290.  
W.A. s. 286.  
Tas. s. 288.

**340.** (1) No investment company shall 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) Subsection (1) of this section shall 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.

**341.** (1) An investment company shall state under separate headings in every balance-sheet of the investment company, in addition to any other matters required to be stated therein—

Balance-sheets  
and accounts.  
Vic. s. 291.  
W.A. s. 387.  
Tas. s. 239.

- (a) the investments of the company in any securities which are not securities 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).

**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".

Investment  
fluctuation  
reserve.  
Vic. s. 292.  
W.A. s. 388.  
Tas. s. 290.

(2) The investment fluctuation reserve shall not be available for the payment of dividends.

(3) The investment fluctuation reserve shall be available for the payment of income tax payable in respect of profits made on the sale of securities.

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## 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 every officer of the investment company who is in default shall be guilty of an offence against this Act.

Penalty: One thousand pounds. Default penalty: One hundred pounds.

(2) No transaction entered into by the company shall be invalid by reason only of such default.

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## DIVISION III.—FOREIGN COMPANIES.

Foreign companies to which this Division applies.

U.K. ss.  
406-423.  
N.S.W. s. 61.  
Vic. s. 294.  
Qld. ss. 321,  
335.  
S.A. ss. 351,  
357, 364.  
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 State.

## Interpretation.

(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 subsection (1) or under subsection (8) of section 346 or under any corresponding previous enactment:

“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 State 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 subsection (2) of this section, a foreign company shall not be regarded as carrying on business within the State for the reason only that within the State 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;

s. 344. GIBSON, BATTLE & Co., LTD. v. JAMES KING & SONS (1915) S.A.L.R. 14; 3 Austr. Digest 1141. A company which did a considerable amount of business in the State through an agent who obtained and forwarded orders and was remunerated by commission, held to carry on business in the State.

- (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 such order is accepted outside the State ;
- (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, but 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.

**345.** A foreign company registered under this Division or under the repealed Act shall have power to hold land in the State.

Power of foreign companies to hold land.  
S.A. s. 355.  
Qsld. s. 323.

**346.** (1) Every foreign company shall, within one month after it establishes a place of business or commences to carry on business within the State, 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, or 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 Act required to be contained in the register of the directors, managers and secretaries of a company incorporated under this Act ;
- (d) where the list includes directors resident in the State 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 ;

Documents, etc., to be lodged by foreign companies having place of business in the State.  
U.K. s. 407.  
N.S.W. s. 62.  
Vic. s. 293.  
Qsld. s. 322, 325, 333.  
S.A. ss. 352-354.  
W.A. s. 329.  
Tas. s. 293.

s. 346. *BERTRAM v. METTERS* (1921) S.A.S.R. 172; 3 Austn. Digest 833. Held that section 196 of the Companies Act, 1892, did not permit an attorney to sue in his own name on behalf of the company.

- (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 and, in either case, verified in the prescribed manner, stating the name and address or the names and addresses of one or more persons resident in this State, 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 State 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 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 subsection (1) of this 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) Subsection (1) of this section shall apply to a foreign company which was not registered under the repealed Act but which, immediately before the date of commencement of this Act, had a place of business or was carrying on business within the State and, on that date, has a place of business or is carrying on business within the State, as if it established that place of business or commenced to carry on that business on that date.

(4) A foreign company shall have a registered office within the State 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 each day, Saturdays, Sundays, and holidays excepted.

(5) An agent, until he ceases to be such in accordance with subsection (7) of this section, shall—

- (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 Act ; and
- (c) be personally liable to all penalties imposed on the company for any contravention of any of the provisions of this Act 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 lodgement of the notice or on the date of the appointment of another agent the memorandum of whose appointment has been lodged in accordance with subsection (8) of this 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 an agent ceases to be the agent and the company is then without an agent in the State, if the company continues to carry on business or has a place of business in the State, 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 subsection (1) of this section and, if not already lodged in pursuance of subsection (2) of this section, a copy of the deed or document or power of attorney referred to in that subsection verified in accordance with that subsection.

(9) On the registration of a foreign company under this Division or the lodging with the Registrar of particulars of a change or alteration in a matter referred to in paragraph (c), (d), or (f) of section 347, the Registrar shall issue a certificate in the prescribed form under his hand and seal which certificate shall be *prima facie* evidence in all courts of the particulars mentioned in the certificate.

(10) Nothing in this section shall require a foreign company which was registered under the repealed Act immediately before the commencement of this Act as a foreign company to register pursuant to this section but such a company shall within one month after the commencement of this Act, lodge with the Registrar such of the documents specified in subsection (1) of this section as have not been lodged by it under the repealed Act.

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Return to be  
filed where  
documents,  
etc., 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 with the Registrar under paragraph (b) of subsection (1) of section 346 ;
- (b) the directors of the foreign company ;
- (c) the agent or agents of the foreign company or the address of any agent ;
- (d) the situation of the registered office of the foreign company in the State or of the days or hours during which it is open and accessible to the public ;
- (e) the address of the registered office of the foreign company in its place of incorporation or origin ;
- (f) the name of the foreign company ; or
- (g) the powers of any directors resident in the State 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 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.

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 that 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 subsection (1) of this 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 subsection 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 Act.

(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 Act.

(5) Subsections (1) to (4) (both inclusive) of this section do 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 Governor has declared by Order published in the *Government Gazette* to be a class of corporations of a kind the same or substantially the same as exempt proprietary companies under this Act ;
- (c) which is included in a class of corporations which the Governor has declared by Order published in the *Government Gazette* to be a class of corporations of a kind the same or substantially the same as proprietary companies under this Act 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 any other State or 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 24 ;  
or

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DIVISION III.

(e) which is an association incorporated in any other State or territory of the Commonwealth under an enactment 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.

Annual return.  
Vic. s. 297.  
Tas. s. 295.

(6) A foreign company referred to in paragraph (a), (b) or (c) of subsection (5) of this 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.

Suspension of  
fee where  
foreign  
company opens  
share regis-  
tration office  
but does not  
carry on  
business.

**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 subsection (2) of section 347, the Registrar certifies in writing that he is satisfied that the company has established in the State 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 State—

- (a) the liability to pay such part (if any) of the fee payable under item 18 of the Second Schedule in respect of the registration as exceeds five hundred pounds ; or
- (b) the liability to pay such part or amount (if any) of the fee payable under item 19 of that Schedule in respect of the lodging of the notice as would, together with the aggregate of the fee or fees previously paid under item 18 and item 19 of that Schedule and the fee or fees (if any) paid under any corresponding previous enactment upon the registration of the company and upon the registration of any increase of its nominal capital, exceed five hundred pounds,

is, by force of this section, suspended until the company commences otherwise to carry on business in the State or fails to comply with subsection (2) of this section, whichever first occurs, but thereupon the company is liable to pay to the Registrar that part or amount of that fee.

(2) A company shall, so long as a suspension under subsection (1) of this section of liability to pay any part or amount of 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 section 348 is lodged with the Registrar a notice in the prescribed form with respect to the business being carried on in the State by the company.

(3) Where a foreign company in respect of which the Registrar has issued a certificate under subsection (1) of this section commences to carry on business in the State 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.

**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 State 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 State ; 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 State.

Obligation to state name of foreign company, whether limited, and State or country, where incorporated.  
U.K. s. 411.  
N.S.W. s. 69.  
Vic. s. 298.  
Qld. s. 330.  
S.A. s. 360.  
W.A. s. 338.  
Tas. s. 296.

**351.** Any document required to be served on a foreign company shall be sufficiently served—

- (a) if addressed to the foreign company and left at or sent by post to its registered office in the State ; or
- (b) if addressed to an agent of the company and left at or sent by post to his registered address.

Service of notice.  
U.K. s. 412.  
N.S.W. s. 69.  
Vic. s. 299.  
Qld. s. 326.  
S.A. s. 356.  
W.A. s. 338.  
Tas. s. 297.

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Cesser of  
business in  
the State.

U.K. s. 413 (2).  
N.S.W. s. 72.  
Vic. s. 300.  
Qld. ss. 340,  
341, 341A.  
S.A. ss. 361,  
361a, 361b,  
361c.  
W.A. ss.  
337-340.  
Tas. s. 298.

**352.** (1) If a foreign company ceases to have a place of business or to carry on business in the State, it shall, within seven days after so ceasing, lodge with the Registrar notice in the prescribed form of that fact, and as from the day on which the notice is so lodged its obligation to lodge any document (not being a document that ought to have been lodged before that day) with the Registrar shall cease, and the Registrar shall upon the expiration of twelve months after the lodging of the notice remove the name of that 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 of the company 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 State is duly appointed by the Court, have the powers and functions of a liquidator for the State.

(3) A liquidator of a foreign company appointed for the State 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 place, 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;

(c) shall recover and realize the assets of the foreign company in the State and, in the case of a foreign company incorporated in any State or Territory of the Commonwealth shall, if the Court so orders and subject to such terms and conditions as the Court may impose, pay the whole or any part of the 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 State 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 subsection (3) of this 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 State the provisions of this Act relating to the striking off the register of the names of defunct companies shall with such adaptations as are necessary extend and apply accordingly.

**353.** (1) Except with the consent of the Minister, a foreign company shall not be registered by a name that, in the opinion of the Registrar, is undesirable or is a name, or a name of a kind, that the Minister has directed the Registrar not to accept for registration.

Restriction on use of certain names.  
Vic. s. 301.  
Qld. s. 334.  
S.A. ss. 27 (4), 27a (2).  
Tas. s. 299.

(2) Except with the consent of the Minister, any change in the name of a foreign company shall not be registered if in the opinion of the Registrar the new name of the company is undesirable or is a name, or a name of a kind, that the Minister has directed the Registrar not to accept for registration, notwithstanding that particulars of the change have been lodged in accordance with section 347.

(3) No foreign company to which this Division applies shall use in the State any name other than that under which it is registered under this Division or under any other Act.

(4) If there is any contravention of subsection (3) of this section the foreign company, every officer of the company who is in default and every agent of the company who knowingly and wilfully authorizes or permits the contravention shall be guilty of an offence against this Act.

Penalty: One hundred pounds. Default penalty.

**354.** (1) Subject to this section, a foreign company which has a share capital and has any member who is resident in the State, shall keep at its registered office in the State or at some other place in the State a branch register for the purpose of registering shares of members resident in the State who apply to have the shares registered therein.

The branch register.  
S.A. ss. 358a, 358c.

(2) The company shall not be obliged to keep a branch register pursuant to subsection (1) of this section until after the expiration of one month in the case of a foreign company

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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 State for registration in its branch register in the State of the shares held by the member.

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

Penalty : Fifty pounds. Default penalty.

(4) This section shall not apply to any foreign company which by its constitution prohibits any invitation to the public to subscribe for shares in the company.

(5) Every such register shall be kept in the manner provided by Division IV 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 State shall be binding on the company and the Court shall have the same powers in relation to rectification of the register as it has in respect of the register of a company incorporated in the State.

(6) Where a foreign company opens a branch register in the State it shall, within fourteen days after the opening thereof, lodge with the Registrar notice in the prescribed form of that fact specifying the address where the register is kept and where immediately before the commencement of this Act, a foreign company was maintaining a branch register in the State and was maintaining it on the date of commencement of this Act, it shall, for the purposes of this subsection, be deemed to have opened the branch register on that date.

(7) Where any 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 185 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 State, 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.

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**355.** Subject to this Act, on application in that behalf by a member resident in the State the foreign company shall register in a branch register of the company the shares held by that member which are registered in any other register kept by the company.

Registration of shares in branch register.  
S.A. s. 358b (1).

**356.** Subject to this Act, on application in that behalf by a member holding shares registered in a branch register, the foreign company shall remove the shares from the branch register and register them in such other register as is specified in the application.

Removal of shares from branch register.  
S.A. s. 358b (2).

**357.** Sections 151, 152 and 153 shall, with such adaptations as are necessary, apply respectively to the index of persons holding shares in a branch register and to the inspection and the closing of the register.

Index of members, inspection and closing of branch registers.  
S.A. ss. 358d, 358e, 358f.

**358.** Sections 95 and 96, subsection (1) of section 97, subsections (1) and (3) of section 99 and section 155 shall apply with necessary adaptations with respect to the transfer of shares on and the rectification of the branch register of a foreign company.

Application of provisions of Act relating to transfer.  
S.A. ss. 358g, 358j-358l.

**359.** A branch register shall be *prima facie* evidence of any matters by this Division directed or authorized to be inserted therein.

Branch register to be *prima facie* evidence.  
S.A. s. 358i.

**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 shall be *prima facie* evidence of the title of the member to the shares and the registration of the shares in the branch register.

Certificate, re share holding.  
S.A. s. 358m (2).

**361.** If default is made by any foreign company in complying with any provisions of this Division other than a provision in which a penalty or punishment is expressly mentioned the company and every officer of the company who is in default and every agent of the company who knowingly and wilfully authorizes or permits the default shall be guilty of an offence against this Act.

Penalties.  
Vic. s. 302.  
S.A. s. 368 (2).

Penalty : Fifty pounds. Default penalty.

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**PART XII.**  
**GENERAL.**

**DIVISION I.—ENFORCEMENT OF ACT.**

**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.

**Security for 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.

**Costs.**

N.S.W. s. 365  
(2).

(2) The costs of any proceeding before a court under this Act shall be borne by such party to the proceeding as the court may, in its discretion, direct.

**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 of South Australia.

(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 of South Australia 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 deal with the proceeds of the sale as if they were moneys paid to him pursuant to the provisions of the law relating to unclaimed moneys.

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**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.

Power to grant relief.  
U.K. s. 448.  
N.S.W. s. 361.  
Vic. s. 254.  
Qsld. s. 379.  
S.A. s. 377.  
W.A. s. 412.  
Tas. s. 308.

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust he may apply to the Court for relief, and the Court shall have the same power to relieve him as under this section it would have had if it had been a court before which proceedings against him for negligence, default, breach of duty or breach of trust had been brought.

(3) Where any case to which subsection (1) of this section applies is being tried by a judge with a jury, the judge after hearing the evidence may, if he is satisfied that the defendant ought in pursuance of that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge thinks proper.

(4) The persons to whom this section applies are—

- (a) officers of a corporation ;
- (b) persons employed by a corporation as auditors, whether they are or are not officers of the corporation ;
- (c) experts within the meaning of this Act ; and
- (d) any persons who are receivers, receivers and managers or liquidators appointed or directed by the Court to carry out any duty under this Act in relation to a corporation and all other persons so appointed or so directed.

**366.** (1) No proceeding under this Act shall be invalidated by any defect, irregularity or deficiency of notice or time unless the Court is of opinion that substantial injustice has been or may be caused thereby which cannot be remedied by any order of the Court.

Irregularities in proceedings.  
N.S.W. s. 357.  
Vic. s. 256.  
Qsld. s. 374.  
S.A. s. 380.  
W.A. s. 415.  
Tas. s. 310.

(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 subsection (1) and subsection (2) of this section or of any other provision of this Act, where any omission, defect, error or irregularity (including the absence of a quorum at any meeting of the company or of the directors) has occurred in the management or administration of a company whereby any breach of any of the provisions of this Act has occurred, or whereby there has been default in the observance of the memorandum or articles of the company or whereby any proceedings at or in connection 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 257, the Court—

- (a) 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 ;
- (b) 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 ;
- (c) where any such order is made, may give such ancillary or consequential directions as it thinks fit ; and
- (d) 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 Act or any rules or regulations thereunder 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. 176.  
Vic. s. 257.

**367.** No inspector appointed under this Act shall 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.

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**368.** (1) If on an application made to a judge of the Court in chambers by the Minister there is shown to be reasonable cause to believe that any person has, while an officer of a company, committed an offence in connection 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.

(2) No appeal shall lie against any order or decision of a judge on or in relation to an application under this section.

**369.** (1) For the purposes of this Act any register, index, minute book or book of account may be kept either 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 Act 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 subsection the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty : Fifty pounds. Default penalty.

**370.** (1) Any register, minute book or document of a corporation which is by this Act required to be available for inspection shall, subject to and in accordance with this Act, be available for inspection at the place where in accordance with this Act it is kept during the hours when the registered office of the corporation in the State is accessible to the public.

(2) Any person permitted by this Act 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 shall be guilty of an offence against this Act.

Production and inspection of books where offence suspected.  
U.K. s. 441.  
Vic. s. 258.  
Tas. s. 311.

Form of registers, etc.  
U.K. s. 436.  
Vic. s. 3 (3).  
S.A. s. 139 (4).  
W.A. s. 484.  
Tas. s. 3 (3).  
(4).

Inspection of registers.  
Vic. s. 95 (4).  
S.A. ss. 94 (1),  
122 (1), 140 (1),  
165 (3).

## PART XII.

## DIVISION I.

Translations of  
instruments.

**371.** (1) Where under this Act a corporation is required to lodge with the Registrar any instrument, certificate, contract or document or a certified copy thereof and the same 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 Act a corporation is required to make available for public inspection any instrument, certificate, contract or document and the same is not written in the English language, the corporation shall keep at its registered office in the State 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. 25 (1) (b)  
W.A. s. 26 (1).  
Tas. s. 14 (4).

**372.** A certificate of incorporation under the hand and seal of the Registrar shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the company referred to therein is duly incorporated under this Act.

Court may  
compel  
compliance.

N.S.W. s. 101.  
Vic. s. 95 (5).  
S.A. ss. 94 (6),  
122 (4), 140 (4),  
165 (5).

**373.** If any person in contravention of this Act 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 II.

## DIVISION II.—OFFENCES.

Restriction on  
offering shares,  
debentures,  
etc., 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) Subsection (1) of this section shall not apply in the case of the shares of any corporation which, after notice in the prescribed form of intention to apply for exemption from the provisions of subsection (1) of this section has been advertised in the *Government Gazette* and in a daily newspaper circulating generally throughout the State, has applied to the Governor for such exemption and the application has on the recommendation of the Minister been granted, but such exemption may at any time be revoked by Order of the Governor published in the *Government 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 statement in writing (which shall be signed by the person making the offer and dated) containing such particulars as are required by this

s. 374. *MADDAFORD v. DE VANTEE* (1951) S.A.S.R. 259. Held that an offer to enter into a certain contract with a company was not an offer of "shares" within the meaning of section 368 of the Companies Act, 1934.

section to be included therein and otherwise complying with the requirements of this section, or, in the case of shares in a corporation formed or incorporated outside the State, either by such a statement, or by such a prospectus as complies with this Act.

(4) Subsection (3) of this section shall 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 in the State 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 to 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 V of Part IV apply and is accompanied by a statement in writing as required by that Division ; or

(ii) deposits with or loans to a corporation of the kind referred to in subsection (4) of section 38.

(5) The statement referred to in subsection (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 subsection (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 State 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 State ;

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- (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 on 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 in the Commonwealth or elsewhere, and (if so) which, and (if not) a statement that they are not so quoted or that no such permission has been granted ;
- (i) where the offer relates to units, particulars of the names and addresses of the persons in whom the shares represented by the units are vested, the date of and the parties to any document defining the terms on which those shares are held, and an address in the State where that document or a copy thereof can be inspected ; and
- (j) the last audited balance-sheet of the corporation.

(7) In subsection (6) of this section "corporation" means the corporation by which the shares to which the statement relates were or are to be issued.

(8) Every person who acts, or incites, causes or procures any person to act, in contravention of this section shall be guilty of an offence against this Act.

Penalty : Six months' imprisonment or two hundred pounds or both, and, in the case of a second or subsequent offence, twelve months' imprisonment or five hundred pounds or both.

(9) Where a person convicted of an offence under this section is a corporation, every officer concerned in the management of the corporation shall be guilty of the like offence unless he proves that the act constituting the offence took place without his knowledge or consent.

(10) Where any person is convicted 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 shall be void and may give such consequential directions as it thinks proper for the repayment of any money or the retransfer of any shares ; and an appeal against the order and any consequential directions shall lie to the Court.

(11) In this section—

“shares” means shares of a corporation whether a corporation in existence or to be formed and includes debentures and units and (without affecting the generality of the expression “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 or certain or contingent or ascertained or sounding only in damages and also includes interests to which the provisions of Division V 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 was made.

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(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.

(14) The provisions of this section do not apply to any offer of—

(a) a right arising out of a document issued by a society as defined in the Friendly Societies Act, 1919-1956, as amended, conferring or purporting to confer on the holder thereof any claim against the society ;

(b) a share in—

(i) an industrial and provident society registered or deemed to be registered under the Industrial and Provident Societies Act, 1923-1958, as amended ; or

(ii) a society registered or deemed to be registered under The Building Societies Act, 1881-1938, as amended ; or

(c) any right or interest under a contract of insurance.

False and misleading statements and frauds in connection with shares, debentures, etc.

U.K. s. 438.  
Vic. s. 260.  
Qld. s. 376.  
S.A. s. 387,  
388, 389.  
W.A. s. 422.  
Tas. s. 315.

**375.** (1) Every 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 every officer of the corporation who knowingly authorizes, directs or consents to such advertising, circulation or publication shall be guilty of an offence against this Act.

(2) Every person who in any return, report, certificate, balance-sheet or other document required by or for the purposes of this Act wilfully makes a statement false in any material particular knowing it to be false shall be guilty of an offence against this Act and be liable—

(a) on conviction on indictment, to imprisonment for a term of two years or to a fine of five hundred pounds or both ; or

(b) on summary conviction, to imprisonment for a term of six months or to a fine of two hundred pounds or both.

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(3) A person who, by any false pretence or fraudulent promise, persuades or attempts to persuade any person—

- (a) to apply for, subscribe for, underwrite, obtain, or to agree to apply for, subscribe for, underwrite, or obtain any share, debenture or other interest in any corporation or in the assets of a corporation, or any interest to which the provisions of Division V of Part IV apply ;
- (b) to lend or agree to lend any money to any corporation ;
- (c) to transfer or agree to transfer any property or interest to any corporation ; or
- (d) to undertake or agree to undertake any liability for or on account of any corporation or from which undertaking any corporation may derive benefit,

shall be guilty of an offence against this Act.

Penalty : Imprisonment for two years or five hundred pounds.

(4) A director or manager of a corporation who aids, abets, counsels, or procures or knowingly permits an officer or agent of the corporation to make any false pretence or fraudulent promise referred to in subsection (3) of this section shall be guilty of an offence against this Act.

Penalty : Imprisonment for two years or five hundred pounds.

(5) In subsections (3) and (4) of this section, "corporation" includes a proposed corporation.

**376.** (1) No dividend shall be payable to the shareholders of any company except out of profits or pursuant to section 60.

Dividends payable from profits only.

Vic. s. 261.  
Tas. s. 316.

(2) Every 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 60—

- (a) shall without prejudice to any other liability be guilty of an offence against this Act ; and
- (b) shall also be 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) No liability by this section imposed on any person shall on the death of such person extend or pass to his executors or administrators nor shall the estate of any such person after his decease be made 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 any 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 shall, unless duly incorporated with limited liability or (as the case may be) no liability, be guilty of an offence against this Act.

Penalty: Fifty pounds. Default penalty.

Restriction on use of word "Proprietary".  
Vic. s. 22 (2).  
Qld. s. 29 (1).  
S.A. ss. 27 (2) (d), 41 (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 Act to be fulfilled by proprietary companies.

(2) Every company and every officer of a company who commits, causes, directs, or authorizes a breach of this section shall be guilty of an offence against this Act.

Penalty: Fifty pounds. Default penalty.

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 Act he is forbidden to do; or

(b) does not do that which by or under this Act he is required or directed to do; or

(c) otherwise contravenes or fails to comply with any provision of this Act,

shall be guilty of an offence against this Act.

(2) A person who is guilty of an offence against this Act shall be liable on conviction to a penalty or punishment not exceeding the penalty or punishment expressly mentioned as the penalty or punishment for the offence, or if a penalty or punishment is not so mentioned, to a penalty not exceeding fifty pounds.

(3) The penalty (other than a default penalty) or punishment, pecuniary or other, set out in, or at the foot of, any section or part of a section of this Act shall indicate that the offence is punishable upon conviction by a penalty or punishment not exceeding that so set out and where the penalty or punishment is expressed to apply to a part only of the section, it shall apply to that part only.

s. 379. REX v. McDONNELL (1940) S.A.S.R. 388. Section 391 of the Companies Act, 1934, did not extend to offences which were declared to be misdemeanours in the Act which were punishable as for common law misdemeanours for which no particular penalties had been created.

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**380.** (1) Where in, or at the foot of, any section or part of a section of this Act there appears the expression "Default Penalty", it shall indicate that any person who is convicted of an offence against this Act in relation to that section or part shall be guilty of a further offence against this Act if the offence continues after he is so convicted and liable to an additional penalty for each day during which the offence so continues of not more than the amount expressed in the section or part as the amount of the default penalty or, if an amount is not so expressed, of not more than ten pounds.

Default penalties.  
U.K. s. 440.  
N.S.W. s. 355.  
Vic. s. 264.  
Qld. s. 378.  
S.A. s. 392.  
Tas. s. 319.

(2) Where any offence is committed by a person by reason of his failure to comply with any provisions of this Act by or under which he is required or directed to do anything within a particular period, that offence, for the purposes of subsection (1) of this 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.

(3) For the purposes of any provision of this Act which provides that an officer of a company or corporation who is in default is guilty of an offence against this Act or is liable to a penalty or punishment, the phrase "officer who is in default" or any like phrase means any officer of the company or corporation who knowingly and wilfully—

- (a) commits or is guilty of the offence ; or
- (b) authorizes or permits the commission of the offence.

**381.** (1) No person shall, whether as principal or agent, sell or offer for sale, or agree to sell or attempt to sell, any shares in any corporation or proposed corporation, if any of the objects of the corporation or proposed corporation is to do any act or carry on any business within or outside the State, which act or business would, if done or carried on within the State, be illegal.

Restriction on sale of shares in companies with illegal objects.  
S.A. s. 369.

Penalty : One hundred pounds.

(2) A document purporting to be a memorandum or proposed memorandum of association of a corporation or proposed corporation shall be *prima facie* evidence in any court of the existence of, or proposal to form, the corporation, as the case may be, and of the contents of its memorandum or proposed memorandum of association, and of the fact that its objects are those stated in the memorandum or proposed memorandum.

## PART XII.

## DIVISION II.

Proceedings  
under this Act.U.K. ss. 442,  
445.

Vic. s. 265.

Qsld. ss. 370,  
371.

S.A. ss. 393-396

Tas. s. 320.

**382.** (1) Except where provision is otherwise made in this Act proceedings for any offence against this Act may be taken by the Registrar or with the written consent of the Minister by any person.

(2) Notwithstanding anything in any Act, proceedings for any offence against this Act may be brought within the period of three years after the commission of the alleged offence or, with the consent of the Minister, at any later time.

(3) Proceedings in respect of any offence against this Act or against any provision thereof made punishable by any penalty (not being an offence expressed to be punishable on conviction on indictment) shall, unless otherwise provided, be disposed of summarily by a court of summary jurisdiction as defined in the Justices Act, 1921-1960, as amended, constituted by a special magistrate, and not otherwise.

S.A. s. 396.

(4) In any proceedings in respect of any offence against this Act or against any provision thereof, an allegation in the information or complaint—

- (a) that a company or corporation is or was at any specified time registered under this Act by a particular name or is or was at any specified time a company or corporation (as the case may be) to which this Act or any specified provision thereof applies ;
- (b) that the defendant, or a person named in the complaint or information, is or at a specified time was a director, or a manager or an officer of a company or corporation named in the complaint or information ; or
- (c) that any meeting of the shareholders or creditors of a company or corporation required by a specified provision of this Act to be held within any particular time has not been held as required by that provision,

shall be deemed to be proved in the absence of satisfactory proof by the defendant to the contrary.

(5) A document purporting to be a consent of the Minister to the taking of proceedings for any offence against this Act or to the bringing of proceedings for such an offence at any time later than the period of three years after the commission of the alleged offence shall be *prima facie* evidence in any court of such consent.

S.A. s. 394.

(6) Any court imposing any penalty under this Act may direct that the whole or any part thereof be applied in or towards payment of the costs of the proceedings or in payment of such compensation to the person on whose information or complaint the penalty is recovered as the court thinks proper in the circumstances.

## DIVISION III.—MISCELLANEOUS.

DIVISION III.

**383.** (1) Except in so far as this Act or any other Act expressly provides otherwise, this Act shall not apply to—

Application of Act to Associations, Societies and other corporations. S.A., s. 2.

- (a) any association incorporated or deemed to be incorporated under the Associations Incorporation Act, 1956, as amended ;
- (b) any society registered or deemed to be registered under The Building Societies Act, 1881-1938, as amended ;
- (c) any industrial and provident society registered or deemed to be registered under the Industrial and Provident Societies Act, 1923-1958, as amended (in this section called an industrial and provident society) ;
- (d) any society as defined in the Friendly Societies Act, 1919-1956, as amended ; and
- (e) any benefit association as defined in the Benefit Associations Act, 1958, as amended.

(2) Section 9, sections 37 to 43 (both inclusive) and sections 45 to 49 (both inclusive) shall, so far as applicable and with such adaptations as are necessary, extend and apply to and in relation to every industrial and provident society as if the society were a company or a corporation, as the case may be.

(3) Division VII of Part IV and Part VIII shall so far as applicable and with such adaptations as are necessary, extend and apply to and in relation to an industrial and provident society and to such corporations, associations and societies whatsoever as are specified for the purpose of this subsection by order of the Governor published in the *Government Gazette* as if the industrial and provident society and those corporations, associations and societies were companies.

**384.** (1) The Registrar shall not register any company if any of the objects of the company is to do any act outside the State or to carry on any business outside the State which act or business would, if done or carried on within the State, be illegal.

Registration to be refused in certain cases. S.A. s. 322.

(2) The Registrar may apply to the Court for the winding up of a company in the same manner as any creditor may apply under Part X for the winding up of a company—

Registrar may apply to Court for winding up company in certain cases. S.A. s. 323.

- (a) where the company has as any of its objects an illegal object ; or
- (b) where the company is carrying on any illegal business or object.

## PART XII.

DIVISION III.

(3) The provisions of Part X, in so far as they provide for a winding up by the Court, shall apply to and in relation to any application by the Registrar under subsection (2) of this section.

Mortgaging of  
shares by  
deposit.  
S.A. s. 386

**385.** (1) Where, whether before or after the commencement of this Act—

- (a) a share certificate has been deposited as security for the payment of any sum of money ; and
- (b) notice in writing has been given by or on behalf of the deposittee to the company that the certificate has been lodged as security for the payment of the sum of money specified in the notice ; and
- (c) the shares in respect of which the share certificate was issued by the company are specifically identified in the notice by the numbers thereof, if any,

any lien of the company, and any right of the company arising after the receipt by the company of the notice to payment by the registered holder of the shares of any sum or sums of money before the holder of such shares becomes entitled to participate in the profits or assets of the company, shall not (except to the amount, if any, unpaid on the shares and interest thereon, and any tax or duty imposed or charged on or against such shares or any dividends or interest therein or thereon which the company may collect from the shareholder whether becoming payable before or after such notice) have priority to the rights of the deposittee to participate in the profits or assets of the company under or by virtue of the security.

(2) Subsection (1) of this section does not limit or restrict any other rights or remedies the company may have against the registered holder of the shares.

(3) Notwithstanding the provisions of subsection (1) of this section, any advances made by or moneys becoming secured to the person entitled to the security notified as provided in that subsection after notice that a lien, charge or set-off has arisen in favour of the company, whether by act of any person or by operation of law, shall be postponed to the company's lien, charge or set-off.

Non-  
application of  
rule against  
perpetuities to  
certain  
schemes.  
N.S.W. s. 34  
S.A. s. 402.

**386.** (1) The rule of law relating to perpetuities shall not apply and shall be deemed never to have applied to the trusts of any fund or scheme for the benefit of any employees of a company whether the fund or scheme was established before or after the commencement of this Act.

## (2) In this section—

“company” includes any company or society formed, whether before or after the commencement of this Act, in pursuance of any Act or Imperial Act or of letters patent or royal charter or otherwise duly constituted according to law, and a foreign company :

“fund or scheme” includes any provident, superannuation, sick, accident, assurance, unemployment, pension, co-operative, benefit, or other like fund, scheme, arrangement or provision :

“employees” includes directors and any persons at any time in the employment of a company and their wives, children, grandchildren, parents and other dependants and any other persons entitled to or capable of receiving any benefit under any fund or scheme.

(3) The provisions of this section do not affect the operation of section 62a of the Law of Property Act, 1936-1960, as amended.

**387.** Where a statutory declaration is required to be made for the purposes of a provision of this Act, a declaration for the purposes of that provision purporting to be made at a place outside the State in accordance with the requirements of the law of that place relating to similar declarations shall, for the purposes of that provision, be deemed to be a statutory declaration.

Statutory  
declarations.  
A.C.T. s. 384

**388.** Where, under this Act, the Court orders a meeting to be summoned, the Court may, subject to this Act, 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.

Power of  
Court to give  
directions with  
respect to  
meetings  
ordered by  
Court.  
A.C.T. s. 388.

**389.** Subject to rules of Court—

(a) any order made by the Court under this Act may be enforced in the same manner as orders of the Court made in matters within its ordinary jurisdiction may be enforced ; and

(b) an appeal from any order or decision made or given by the Court under this Act shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the Court in matters within its ordinary jurisdiction.

Orders and  
decisions of  
the Court.  
S.A. s. 376.

**390.** (1) Where any person has obtained a judgment or order in a local court against a company for the payment of any sum of money not exceeding two hundred pounds, or who has obtained any judgment, decree, or order of the Supreme Court or a court of competent jurisdiction for the payment by a company of any sum not exceeding two hundred pounds which sum has not been paid, the party entitled to the benefit of such judgment, order, or decree may serve on the company by leaving it at the registered office of the company a notice requiring the company to pay the amount so due.

(2) If the company for seven days thereafter neglects to pay the amount so due or to secure or compound for it to the reasonable satisfaction of the party giving the notice, such party may apply to the local court having jurisdiction as provided by subsection (2) of section 175 of the Local Courts Act, 1926-1959, as amended, to issue a judgment summons as provided by section 175 of that Act, against any person proved to be a director or manager or secretary of the company.

(3) Upon an application under subsection (2) of this section the local court shall have jurisdiction to issue a judgment summons against any director, manager, or secretary, of the company in the same manner as if the director, manager, or secretary were a party liable to pay the amount due under the judgment, order or decree.

(4) Any judgment summons issued as aforesaid shall have the same effect, and the person to whom it is directed shall obey the same and be subject to the same obligations and penalties, as if he were a party liable to pay the amount so due, except that, for the purposes of this section—

(a) he shall not be personally liable to pay any part of the amount due except out of the moneys of the company in his hands or subject to his control ;

(b) he shall not be liable to be imprisoned by virtue of the operation of paragraphs (d) to (i), both inclusive, of section 178 of the Local Courts Act, 1926-1959, as amended ; and

(c) the provisions of subsection (5) of this section shall be substituted for section 177 of the Local Courts Act, 1926-1959, as amended, which shall not apply.

(5) At the hearing of the summons—

(a) the person summoned may be examined upon oath touching the company's estate and effects and whether any and what debts are owing or accruing due to the company, as to the property and means

the company has of discharging the judgment, order, or decree, and as to the disposal or dealings of the company with any of its assets, and as to the whereabouts of any chattel detained or specific goods ordered to be delivered, as to what inquiries he has made under paragraph (c) of this subsection and upon such other matters relating to the company as are prescribed by rules under the Local Courts Act, 1926-1959, as amended, or are specified in the summons ;

- (b) the court may hear such evidence in relation to the matters referred to in paragraph (a) of this subsection as it thinks fit ;
- (c) if the person summoned has no personal knowledge of the matters referred to in paragraphs (a) and (b) of this subsection or of any matter upon which he may be examined, he shall make inquiries of the officers or servants of the company to enable him to fully answer all such matters ; and
- (d) the court may order the company to pay the judgment debts at such times or in such instalments as it thinks fit, and may make an order under section 185 of the Local Courts Act, 1926-1959, as amended, in the same manner as if the company were a judgment debtor orally examined on the hearing of an unsatisfied judgment summons.

(6) Any officer of a company summoned under the provisions of this section and the company may be represented by counsel or a solicitor on any hearing under this section and may adduce evidence at the hearing.

(7) In this section the word "company" includes any company or corporation however incorporated, registered in or carrying on business in this State whether a company or corporation within the meaning of this Act or not.

**391.** (1) Any transfer of a share in any company to an infant for the purpose of avoiding or evading liability with regard to such share, shall not relieve the transferor of any such liability.

Transfer to  
avoid  
liability.  
S.A. s. 385.

(2) No transfer of a share in any company made for the purpose of avoiding or evading liability with regard to such share shall relieve the transferor of any such liability, if the transfer is made to any person for a nominal consideration, or

## PART XII.

## DIVISION III.

for no consideration, or for valuable consideration expressed, but not paid to the transferor, or for a consideration paid to the transferee, or with a trust or reservation expressed, or implied, for the benefit of the transferor, or to a person known to the transferor to be unable to pay the liability on such share, unless such transfer has been made and registered two years before the company is wound up.

Powers of  
certain foreign  
corporations.  
S.A. s. 400.

**392.** Where by any private Act, whether passed before or after this Act, powers have been conferred on any corporation incorporated outside the State, the express grant of powers to the corporation by the private Act shall not be held to restrict by implication any other powers of the corporation.

Arbitration and  
conciliation.  
S.A. s. 174.

**393.** (1) A corporation may, by writing under its common seal, agree to refer and may refer to arbitration, in accordance with the Arbitration Act, 1891-1934, as amended, any existing or future difference between itself and any other corporation or person, and that Act shall apply to every such arbitration as if the reference to arbitration were a submission as defined in that Act.

(2) The parties to the arbitration may delegate to the person or persons to whom the reference is made power to settle any forms, order anything to be done, or determine any matter capable of being lawfully settled, done or determined, as the case may be, by the parties to the reference themselves, and, where a party to the reference is a corporation, by the directors or other managing body of the corporation.

(3) A corporation may submit any difference between itself and any other person for adjudication or conciliation under section 34 of the Local Courts Act, 1926-1959, as amended or under the Conciliation Act, 1929, as amended.

Moneys to be  
provided by  
Parliament.

**394.** All moneys necessary for the administration of this Act and for giving effect to the objects thereof shall be paid out of money to be voted by Parliament for the purpose.

Rules.  
N.S.W. s. 380  
(2).  
Vic. s. 10.  
Qld. s. 384.  
S.A. s. 372.  
W.A. s. 407.  
Tas. s. 323.

**395.** (1) The Judges of the Court, may, subject to and in accordance with the Supreme Court Act, 1935-1960, as amended, make rules—

(a) with respect to proceedings and the practice and procedure of the Court under this Act ;

- (b) with respect to any matter or thing which is by this Act required or permitted to be prescribed by rules ; and
- (c) without limiting the generality of the provisions of this section, with respect to costs, rules as to meetings ordered by the Court, fees to be paid in respect of proceedings before the Court, and the manner in which the jurisdiction of the Court under this Act is to be exercised, and whether it is to be exercised in Court or in Chambers, or by a Judge or the Master of the Supreme Court.

(2) Until such rules are made the general practice and procedure of the Supreme Court shall, so far as the same are applicable and not inconsistent with this Act, apply to all proceedings of the Court under this Act.

**396.** (1) The Governor may make regulations for or with respect to—

- (a) the keeping of registers by the Registrar and the lodging or registration of documents and the time and manner of submission of any document for lodging or registration ;
- (b) prescribing forms for the purposes of this Act ;
- (c) prescribing fees, not in any case exceeding ten pounds, to be paid to the Registrar in respect of matters or things not provided for in the Second Schedule in respect of any document required to be lodged, filed, registered with or issued by the Registrar under this Act or any other Act or for any act required to be performed by the Registrar or for the inspection of any such document or for any examination conducted by the Board ;
- (d) prescribing times for the lodging of any documents with the Registrar ;
- (e) 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 ;
- (f) making provision for or in relation to the proof of debts on a winding up under Division III of Part X ;

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.

- (g) all matters or things which by this Act are required or permitted to be prescribed otherwise than by rules or which are necessary or expedient to be prescribed for giving effect to this Act; and
- (h) penalties not exceeding twenty pounds for any breach of the regulations.

(2) The regulations may require that any document which is required for the purposes of this Act shall, if no method of verification or certification is prescribed by this Act, be verified or certified (as the case requires) by statutory declaration or other method, in accordance with the regulations.

## PART XIII.

SPECIAL PROVISIONS RELATING TO LOCAL  
PROPRIETARY AND PRIVATE COMPANIES.

**397.** In this Part, unless the contrary intention appears—

Interpretation.

“appointed day” means the first day of July one thousand nine hundred and sixty-five.

“prescribed private company” means a private company—

(a) the number of members of which (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) does not exceed, and has not since the commencement of this Act or for the period of twelve months since the date of its last annual return lodged with the Registrar under section 158 exceeded, fifty; and

(b) which—

(i) has no place of business outside the State;

(ii) is not carrying on business in any place outside the State; and

(iii) since the date of its last annual return lodged with the Registrar under section 158 or since the commencement of this Act, has had no place of business outside the State and has not carried on business in any place outside the State:

“prescribed proprietary company” means a proprietary company which—

(i) has no place of business outside the State;

(ii) is not carrying on business in any place outside the State; and

(iii) since the date of its last annual return lodged with the Registrar under section 158, since the incorporation of the company, or since

the commencement of this Act, whichever last occurs, has had no place of business outside the State and has not carried on business in any place outside the State.

Exemption of prescribed proprietary and private companies from lodging accounts.

**398. (1) Where—**

- (a) the beneficial interests in the shares in a prescribed proprietary company or a prescribed private company (hereinafter referred to as "the first-mentioned company") are held solely by natural persons or by other prescribed proprietary companies or prescribed private companies or by a combination of such companies or of natural persons and such companies and neither a public company nor a foreign company, directly or indirectly, owns a beneficial interest in a share in any of such companies or in any corporation that, by virtue of subsection (5) of section 6, is deemed to be related to any of them ; and
- (b) a certificate complying with subsection (2) of this section is included in any annual return lodged by the first-mentioned company under section 158,

that return need not include a copy of the last balance-sheet and last profit and loss account of the first-mentioned company as required by the Eighth Schedule.

(2) The certificate referred to in paragraph (b) of subsection (1) of this section shall—

- (a) be given by both a director and a secretary of the first-mentioned company ; and
- (b) be in the appropriate form contained in the Eighth Schedule and shall state—
- (i) that the company is a prescribed proprietary company or a prescribed private company (as the case may be) ;
- (ii) that, since the date of its last annual return lodged with the Registrar under section 158, since the incorporation of the company, or since the commencement of this Act (whichever last occurs), the company has had no place of business outside the State, has not carried on

business in any place outside the State and has, to the best of the knowledge and belief of the persons giving the certificate, been a prescribed proprietary company or a prescribed private company (as the case may be); and

- (iii) that, to the best of the knowledge and belief of the persons giving the certificate, the beneficial interests in the shares in the company are held and, since the date, incorporation or commencement, as the case may be, referred to in subparagraph (ii) of this paragraph, have been held solely by natural persons or by other prescribed proprietary companies or prescribed private companies or by a combination of such companies or of natural persons and such companies, and a public company or foreign company, directly or indirectly, does not own and, since the date, incorporation or commencement, as the case may be, referred to in subparagraph (ii) of this paragraph, has not owned a beneficial interest in a share in any of such companies or in any corporation that, by virtue of subsection (5) of section 6, is deemed to be related to any of them.

(3) Where a person holds shares in a proprietary company or a private company otherwise than as the beneficial owner thereof he shall—

- (a) if the shares are so held at the commencement of this Act, within one month after such commencement;
- or
- (b) if the shares are acquired and so held after the commencement of this Act, within one month after they are so acquired,

give the secretary of the company notice in writing that he so holds the shares and such other information relating to the beneficial ownership of the shares as the secretary requires for the purposes of the certificate referred to in subsection (2) of this section.

**399.** (1) After the appointed day the Registrar shall give notice in writing to every private company that, on a date specified in the notice (being a date not less than three months

When private  
companies  
become public  
companies.

after the date of the notice), the company shall be deemed to be a public company unless, prior to that date the company converts to a proprietary company in accordance with section 26.

(2) Where a private company which has received a notice referred to in subsection (1) of this section fails to convert to a proprietary company on or before the date so specified in the notice or within such further time as the Registrar may, in the special circumstances of any case, in writing grant, the company shall thereupon, notwithstanding any other provision of this Act, cease to be a private company and shall be deemed to be a public company and, within a period of fourteen days after so ceasing, shall lodge with the Registrar—

(i) a statement in lieu of prospectus ; and

(ii) a statutory declaration in the prescribed form verifying that paragraph (b) of subsection (2) of section 52 has been complied with.

(3) If default is made in complying with subsection (2) of this section by reason of failure by a company to lodge with the Registrar any of the documents required by that subsection to be so lodged, the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty : Fifty pounds. Default penalty.

(4) Subsection (2) of this section shall not prevent a company which, by virtue of that subsection, is deemed to be a public company and which has lodged with the Registrar the documents required by that subsection to be so lodged from converting to a proprietary company in accordance with the provisions of section 26.

(5) The operation of subsection (2) of this section shall not affect the identity or any rights or obligations of a company as such or render defective any legal proceedings by or against a company and any legal proceedings that could have been continued or commenced by or against a company to which that subsection applies before the date on which the company ceased to be a private company may be continued or commenced by or against it on or after that date.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

J. M. NAPIER, Governor's Deputy.

## SCHEDULES.

## FIRST SCHEDULE.

Section 4.

## ACTS REPEALED.

Number and Year of Act.	Title of Act.
No. 2196 of 1934 .....	The Companies Act, 1934.
No. 2199 of 1935 .....	Companies Act Amendment Act, 1935.
No. 46 of 1939 .....	Companies Act Amendment Act, 1939.
No. 45 of 1952 .....	Companies Act Amendment Act, 1952.
No. 55 of 1956 .....	Companies Act Amendment Act, 1956.
No. 31 of 1960 .....	Companies Act Amendment Act, 1960.

## SECOND SCHEDULE.

Section 7 (11).  
S.A. Thirteenth  
Schedule.

## TABLE OF FEES TO BE PAID TO THE REGISTRAR.

*By a Company having a Share Capital.*

	£	s.	d.
1. For registration of a company whose nominal share capital does not exceed £5,000 .....	20	0	0
2. For registration of a company whose nominal share capital exceeds £5,000 the above fee of £20 with the following additional fees regulated according to the amount of nominal share capital (that is to say)—			
For every £1,000 of nominal share capital, or part of £1,000, after the first £5,000, up to £100,000 .....	1	0	0
For every £1,000 of nominal share capital or part of £1,000, after the first £100,000, up to £500,000 .....	0	10	0
For every £1,000 of nominal share capital or part of £1,000, after the first £500,000 .....	0	5	0
3. On lodging notice of increase of share capital—an amount equal to the difference (if any) between the amount which would have been payable on first registration by reference to its capital as increased and the amount which would have been payable by reference to its capital immediately before the increase but in the case of a company incorporated before the commencement of this Act with a share capital of less than £5,000 the fee shall be £5 per £1,000 or any fractional part of £1,000 or £10 (whichever is the lesser amount) for any increase up to £5,000 and thereafter an amount calculated as aforesaid.			

*By a Company not having a Share Capital.*

	£	s.	d.
4. For registration of a company whose number of members as stated in the articles of association does not exceed 20 .....	5	0	0
5. For registration of a company whose number of members as stated in the articles of association exceeds 20 but does not exceed 100 but is not stated to be unlimited the fee of £10 (with an additional 10s. for every 50 members or less number than 50 members after the first 100) but no company shall be liable to pay on the whole a greater fee than one hundred pounds in respect of its number of members taking into account the fee paid on the first registration of the company.			
6. For registration of a company in which the number of members is stated in the articles of association to be unlimited .....	100	0	0
7. For registration of the first increase in the number of members made after the registration of a company, whose number of members as stated in the articles of association does not exceed 20, to a number exceeding 20 but not exceeding 100 .....	5	0	0

## SECOND SCHEDULE—continued.

	£	s.	d.
8. For registration of any other increase in the number of members of a company in respect of every 50 members or less than 50 members of that increase .....	0	10	0
<i>Other Fees.</i>			
9. For every application for consent of the Minister to use of a name by a corporation .....	5	0	0
10. For every Order of the Minister granting consent to use of name by a corporation .....	10	0	0
11. For every approval of the Registrar to the change of the name of a company (otherwise than a change of name directed by the Registrar pursuant to the provisions of subsection (2) of section 23 or a change of name pursuant to subsection (2) of section 24 of this Act) .....	10	0	0
12. For every licence of the Minister to dispense with the word "limited" in the name of a company .....	10	0	0
13. For approval of the Minister to alter the memorandum or articles of a company .....	2	0	0
14. On lodgment of request to the Registrar to exercise the powers conferred by sections 309 or 311 .....	1	0	0
15. For every act done by the Registrar as representing a defunct company under section 309 .....	1	0	0
16. For every act done by the Registrar as representing a defunct company under section 311 .....	5	0	0
17. On the late lodging of any document under this Act, in addition to any other fee—			
(a) if lodged within one month after the period prescribed by law ..	1	0	0
(b) if lodged more than one month after the period prescribed by law in addition to the fee payable under subparagraph (a) .....	5	0	0
The Registrar, if satisfied that just cause existed for the late lodgment may waive in whole or in part the additional fee under paragraph (b).			
*18. For the registration of a foreign company—			
(a) subject to paragraphs (b) and (c), one-half of the appropriate fee prescribed in respect of a company registered or incorporated under Part III of this Act ;			
(b) subject to paragraph (c) where the fee prescribed in paragraph (a) is not applicable .....	100	0	0
and			
(c) in the case of a corporation authorized by the law of any State or Territory to take in its own name a grant of probate or letters of administration of the estate of a deceased person .....	50	0	0
*19. On lodging 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 number of members beyond its registered number—one-half of the prescribed fee payable on the increase in share capital or on the increase in the number of members of a company incorporated or registered under Part III.			
20. For registering any charge created by a corporation .....	4	0	0
21. For registering particulars of a series of debentures .....	4	0	0
22. For registering particulars of each issue of debentures where more than one issue in the series .....	2	0	0
23. On an application for the reservation of a name .....	3	0	0
24. On lodging articles of association of a company .....	2	0	0
25. On lodging a copy of any special resolution altering the articles of association of a company .....	2	0	0

SECOND SCHEDULE—*continued.*

	£	s.	d.
26. On lodging a copy of any special resolution altering the objects clause of the memorandum of association of a company .....	2	0	0
27. On lodging any deed or copy of a deed under section 78 or on lodging any prospectus or statement in lieu of prospectus or statements required under section 82 .....	5	0	0
28. On any subpoena served on the Registrar to produce any document in his custody .....	2	0	0
29. On lodging any application under section 44 or section 374 .....	5	0	0
30. On lodging any other application .....	1	0	0
31. For entry in the register of charges of any memorandum of satisfaction..	2	0	0
32. For every certificate issued by the Registrar under any Act .....	1	0	0
33. For copy or extract made and certified by the Registrar of any document in his custody—			
For each copy or extract not exceeding five folios of 72 words to the folio .....	1	0	0
For each additional folio of 72 words .....	0	2	0
34. For the completing and certifying by the Registrar of a copy or extract of any document in his custody of which a printed or typed copy is supplied—			
For each copy or extract not exceeding five folios of 72 words to the folio .....	0	10	0
For each additional folio of 72 words .....	0	1	0
35. For photographic copies of documents in the custody of the Registrar— for each sheet copied .....	0	10	0
36. For search as to availability of any name proposed to be adopted by a company—for every name searched .....	0	10	0
37. For every search or inspection in relation to a particular company of the registers and documents kept by the Registrar, pursuant to Division VII, Part IV .....	0	5	0
38. For search for and inspection of a document or documents filed by or in relation to a company—			
(a) where the number of documents searched and inspected is not more than three, for each document .....	0	5	0
(b) where the number of documents searched and inspected is more than three, for the number of documents searched and inspected .....	1	0	0
39. On lodging any Annual Return of a Company .....	2	0	0
40. On lodging, registering, depositing, or filing any other document with or by the Registrar under any Act (where the fee is not specified in any relevant Act or Regulation) .....	1	0	0

\*Fees payable with respect to companies formed or incorporated outside the Commonwealth shall where appropriate be calculated after the conversion of the share capital to Australian currency.

## THIRD SCHEDULE.

## POWERS.

1. To carry on any other business which may seem to the company capable of being conveniently carried on in connection 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.

Section 19.  
S.A. s. 35  
2nd Schedule.  
W.A. 3rd  
Schedule.  
Vic. 3rd  
Schedule.  
N.Z. 1955  
No. 63 Second  
Schedule.

THIRD SCHEDULE—*continued.*

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.

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 supreme 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, and 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 connections 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, and otherwise acquire any real and personal property and 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, and 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, and 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 and advance money or give credit to any person or company; to guarantee and give guarantees or indemnities for the payment of money or the performance of contracts or obligations by any person or company; to secure or undertake 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.

15. To draw, make, accept, endorse, discount, execute, and issue promissory notes, bills of exchange, bills of lading, and other negotiable or transferable instruments.

THIRD SCHEDULE—*continued.*

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 State.

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.

## FOURTH SCHEDULE.

## TABLE A.

## REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES.

*Interpretation.*

## 1. In these regulations—

“the Act” means the Companies Act, 1962 :

“the seal” means the common seal of the company :

“secretary” means any person appointed to perform the duties of a secretary of the company :

“State” means the State of South Australia :

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 :

words or expressions contained in these regulations shall be interpreted in accordance with the provisions of the Acts Interpretation Act, 1915-1957, as amended, and of the Act as in force at the date at which these regulations become binding on the company.

Sections 5 (1),  
30.

S.A. 1st  
Schedule.

FOURTH SCHEDULE—*continued.**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 Act, 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 Act, 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 *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll.

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 Act, provided that the rate per cent or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by the Act and the commission shall not exceed the rate of 10 per cent of the price at which the shares in respect whereof the same is paid are issued or an amount equal to 10 per cent 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. 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 Act 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.

*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, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

FOURTH SCHEDULE—*continued.*

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, provided 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 cent per annum as the directors may determine, but the directors shall be at liberty to waive payment of that interest wholly or in part.

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 shall otherwise direct) 8 per cent 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 any 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 any transfer of shares not being fully paid shares to a person of whom they do not approve and may also decline to register any transfer of shares on which the company has a lien.

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.

FOURTH SCHEDULE—*continued.**Transmission of Shares.*

24. 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; 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. Any 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 person nominated by him registered as the transferee thereof, but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by 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 aforesaid as if the 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 any share dies or becomes bankrupt his personal representative or the assignee 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 as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect. 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, notwithstanding, 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 cent 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.

FOURTH SCHEDULE—*continued.*

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.

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 the words "share" and "shareholder" therein shall include "stock" and "stockholder".

*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 shall prescribe;
- (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
- (c) subdivide into 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;
- (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.

FOURTH SCHEDULE—*continued.**General Meetings.*

43. An annual general meeting of the company shall be held in accordance with the provisions of the Act. All general meetings other than the 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 Act.

45. Subject to the provisions of the Act relating to special resolutions and agreements for shorter notice, seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of meeting and in case of special business the general nature of that business shall be given 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 reports 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. Save as herein otherwise provided, three members [*in the case of a public company*] two members [*in the case of a proprietary company or a private company*] present in person shall be 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; 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 be 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. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

51. 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.

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. The demand for a poll may be withdrawn.



FOURTH SCHEDULE—*continued.*

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 as aforesaid 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, Etc.*

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 Act 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 connection 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.

72. The office of director shall become vacant if the director—

- (a) ceases to be a director by virtue of the Act;
- (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 Act;
- (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 Act.

## FOURTH SCHEDULE—continued.

*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 Act 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 Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

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 State and in relation to branch registers.

76. The directors may from time to time by power of attorney appoint any corporation, or 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 powers 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. The directors shall cause minutes to be made—

(a) of all appointments of officers;

(b) of 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.

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*

79. The directors may meet together for the dispatch of business, 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 the 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 require any share qualification, and shall *ipso facto* 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.

FOURTH SCHEDULE—*continued*

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; 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; 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 any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

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.

*Managing Directors.*

91. The directors may from time to time appoint one or more of their body 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 be automatically determined 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 may 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 nor 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 Act 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 only be used 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.

FOURTH SCHEDULE—*continued.**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 Act 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 any right of inspecting any account or book or paper of the company except as conferred by statute 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 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 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 dividend 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

FOURTH SCHEDULE—*continued.*

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 as aforesaid shall have been 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.*

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 State) to the address, if any, within the State supplied by him to the company for the giving of notices to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting 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 the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or assignee of the bankrupt, or by any like description, at the address, if any, within the State supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

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 State) have not supplied to the company an address within the State 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 to be, or is being, 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 divided as aforesaid 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.

FOURTH SCHEDULE—*continued.**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 connection with any application under the Act in which relief is granted to him by the Court in respect of any negligence, default, breach of duty or breach of trust.

## TABLE B.

## REGULATIONS FOR MANAGEMENT OF A NO-LIABILITY COMPANY.

*Interpretation.*

## 1. In these regulations—

“the Act” means the *Companies Act, 1962* ;

“the seal” means the common seal of the company ;

“secretary” means any person appointed to perform the duties of a secretary of the Company ;

“State” means the State of South Australia ;

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 ;

words or expressions contained in these regulations shall be interpreted in accordance with the provisions of the *Acts Interpretation Act, 1915-1957*, as amended, and of the Act 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 Act, 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 Act, 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 *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll.

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 Act, provided that the rate per cent or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by the Act and the commission shall not exceed the rate of 10 per cent of the price at which the shares in respect whereof the same is paid are issued or an amount equal to 10 per cent 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.

FOURTH SCHEDULE—*continued.*

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 Act 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 Act 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 Act 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 any 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 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.

16. Any 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 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 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 aforesaid 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 any share dies or becomes bankrupt his personal representative or the assignee 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.

FOURTH SCHEDULE—*continued.**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 reconvert 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 the words "share" and "shareholder" therein shall include "stock" and "stockholder".

*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 shall prescribe;
- (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;
- (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 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 Act. All general meetings other than the 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 Act.

28. Subject to the provisions of the Act relating to special resolutions and agreements for shorter notice, seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of meeting and in case of special business the general nature of that business shall be given to such persons as are entitled to receive such notices from the company.

## FOURTH SCHEDULE—continued.

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. Save as herein otherwise provided, three members present in person shall be 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; 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 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 be 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. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

34. 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.

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. 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.

FOURTH SCHEDULE—*continued*.

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 by the Public 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 a common or usual form under the hand of the appointer or of his attorney duly authorized in writing or, if the appointer is a corporation, either under the 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.

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 in favour of the resolution.  
against

\*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 State 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 as aforesaid 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 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.

FOURTH SCHEDULE—*continued.*

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 Act 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 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 connection 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 Act;
- (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 Act;
- (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 Act.

*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 Act 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 Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

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.

FOURTH SCHEDULE—*continued.*

58. The directors may exercise all the powers of the company in relation to any official seal for use outside the State and in relation to branch registers.

59. The directors may from time to time by power of attorney appoint any corporation, firm, or 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 powers 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.

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. The directors shall cause minutes to be made—

(a) of all appointments of officers ;

(b) of 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.

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, 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 require any share qualifications, and shall *ipso facto* 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 ; 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.

FOURTH SCHEDULE—*continued.*

70. A committee may elect a chairman of its meetings ; if no such chairman is elected, or if at any meeting the chairman is not present within 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.

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 any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

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 body 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 be automatically determined 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, commissions, or participation in profits, or partly in one way and partly in another) as the directors may 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 nor 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 Act 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 only be used 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 Act 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 any right of inspecting any account or book or paper of the company except as conferred by statute or authorized by the directors or by the company in general meeting.

FOURTH SCHEDULE—*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, only be applied in the paying up of unissued shares to be issued to members of the company as fully paid bonus shares.

89. Whenever such a resolution as aforesaid shall have been 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

FOURTH SCHEDULE—*continued.*

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 Act 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 State) to the address, if any, within the State supplied by him to the company for the giving of notices to him. Where a notice is sent by post, service of the notice shall be deemed to be effected, by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting 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 the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased or assignee of the bankrupt, or by any like description, at the address, if any, within the State supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

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 State) have not supplied to the company an address within the State 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 to be, or is being, 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 divided as aforesaid 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 subsection (2) of section 330 of the Act all moneys and assets that may be legally distributable 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 promoters, 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 judgement is given in his favour or in which he is acquitted or in connection with any application under the Act 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.

## 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 the matters aforesaid 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.
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 ;
  - (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 ;

## Section 39.

U.K. 4th  
Schedule.  
N.S.W. 8th  
Schedule.  
Vic. 5th  
Schedule.  
Qsld. 4th  
Schedule.  
S.A. s. 50  
Parts A, B, C  
W.A. s. 47  
Parts A, B, C.  
Tas. 5th  
Schedule.

FIFTH SCHEDULE—*continued.*

- (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, 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 (but not including commission to sub-underwriters) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in or debentures of the company, or the rate of any such commission, and the names of any directors or promoters or 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.
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 connection with the promotion or formation of the company or (in the case of an expert) for services rendered by him or the firm in connection with the promotion or formation of the company.
18. Where the prospectus relates to shares, 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.
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-paragraph (2) or (3) of this paragraph, 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

FIFTH SCHEDULE—*continued.*

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;
  - (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 Minister having regard to the circumstances of any particular case consents thereto in writing, twelve months) before the issue of the prospectus.

- (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 subparagraph (2) hereof 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 subparagraph (2) hereof, 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 regards 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 Minister 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 connection 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—

- (i) 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
- (ii) 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 Minister having regard

FIFTH SCHEDULE—*continued.*

to the circumstances of the particular case consents thereto in writing, twelve months) before the issue of the prospectus.

(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 subparagraph (3) of paragraph 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;

(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. Paragraphs 2, 13 (so far as it relates to preliminary expenses), and 17 of this Schedule shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

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 shall have effect as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.

27. References in paragraph 8 of this Schedule to an option to subscribe for shares or debentures shall 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 shall 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 paragraph 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 shall have 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.

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 of this Schedule 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.

SIXTH SCHEDULE.

STATEMENT IN LIEU OF PROSPECTUS.

PART I.

Statement in Lieu of Prospectus lodged for Registration by [insert name of the company].

Section 51.  
U.K. 3rd and 5th Schedules.  
N.S.W. 4th and 9th Schedules.  
Vic. 6th Schedule.  
Qld. 5th Schedule.  
S.A. 3rd and 4th Schedules.  
W.A. 4th and 5th Schedules.  
Tas. 6th Schedule.

The nominal share capital of the company .....	£		
Divided into .....		Shares of £	each : £
		Shares of £	each : £
		Shares of £	each : £
Amount (if any) of above capital which consists of redeemable preference shares		Shares of £	each : £
The date on or before which these shares are, or are liable, to be redeemed			
Names, descriptions, and addresses of directors or proposed directors			
If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively			
Number and amount of shares and debentures, issued within the two years preceding the date of this statement 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 £	
		4. Consideration :	
The consideration for the issue or intended issue of those shares and debentures		1. shares of £	and debentures of £
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		2. Until	
Period during which option is exercisable .....		3. £	
Price to be paid for shares or debentures subscribed for or acquired under option .....		4. Consideration :	
Consideration for option or right to option .....		5. Names and addresses :	
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			
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			
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 paid : £	
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 payable : £	
Rate of the commission .....		per cent	

SIXTH SCHEDULE—*continued.*

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 :
	Nature and value of benefit
Consideration for giving 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 (1) in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, and (2) 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 services rendered by him or by the firm in connection with the promotion or formation of the company or (in the case of an expert) for services rendered by him or the firm in connection with the promotion or formation of the company	
<i>And, also, in the case of a statement to be lodged by a proprietary company or a private company on becoming a public company, the following items :—</i>	
Rates of the dividends (if any) paid by the company in respect of each class of shares in the company in respect of each of the five financial years immediately preceding the 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 respect of 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 connection therewith will become a subsidiary of the company, a report by a registered company auditor (who

SIXTH SCHEDULE—*continued.*

shall be named in the statement) with respect to the profits and losses and assets and liabilities of the other corporation in accordance with subparagraph (2) or (3) of this paragraph, 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 subparagraph (1) of this paragraph 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 subparagraph (1) of this paragraph shall—

- (a) so far as regards profits and losses, deal separately with the other corporation's profits or losses as provided by sub-paragraph (2) of this paragraph, 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
- (b) so far as regards assets and liabilities, deal separately with the other corporation's assets and liabilities as provided by sub-paragraph (2) of this paragraph, 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 Act, 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 shall have 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.

N.S.W. 14th  
Schedule

Vic. 7th  
Schedule.

Qsld. 13th  
Schedule.

Tas. 7th  
Schedule.

S.A. s. 114g (2),  
S.A. Coy. Regs.

## SEVENTH SCHEDULE

## STATEMENT REQUIRED PURSUANT TO DIVISION V OF PART IV.

## 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.
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.
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 connection 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 is to be met.

SEVENTH SCHEDULE—*continued.*

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 person 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.

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 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 connection 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 interest 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 Act 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 shall be allotted later than six months after the date appearing in the statement pursuant to paragraph 1 hereof; and
- (b) unless the conditions of issue of the units or sub-units expressly provide that certificates be not issued, that certificates shall 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 and bonuses, and where it consisted of any component other than dividends, interest and 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 shall have 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.

## PART I.

*Contents of Annual Return of a Company Having a Share Capital.*

Sections 158,  
160.  
U.K. 6th  
Schedule.  
N.S.W. 6th  
Schedule.  
Vic. 8th  
Schedule.  
Qld. 6th  
Schedule.  
S.A. s. 129, 5th  
Schedule.  
W.A. 6th  
Schedule.  
Tas. 8th  
Schedule.

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;
  - (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;



EIGHTH SCHEDULE—*continued.**Summary of Share Capital and Shares.*

Nominal share capital £	divided into .....	} shares of £	each.
Total number of shares taken up <sup>1</sup> 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			
<sup>2</sup> 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		}	£
<sup>3</sup> There has been called up on each of	shares, £		
<sup>3</sup> There has been called up on each of	shares, £		
<sup>3</sup> There has been called up on each of	shares, £		
<sup>4</sup> Total amount of calls received including payments on application and allotment		}	£
Total amount (if any) agreed to be considered as paid on shares which have been issued as fully paid up otherwise than in cash			
Total amount (if any) agreed to be considered as paid on shares which have been issued as partly paid up to the extent of	per share otherwise than in cash	}	£
Total amount of calls unpaid .....	£		
Total amount of the sums (if any) paid by way of commission in respect of any shares or debentures 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 .....	£		
<sup>5</sup> Total amount of the indebtedness of the company in respect of all charges which are required to be registered with the Registrar of Companies		}	£

<sup>1</sup>Where there are shares of different kinds or amounts (e.g., Preference and Ordinary, or £10 and £5) state the number and nominal value of each separately.

<sup>2</sup>If the shares are of different kinds, state them separately.

<sup>3</sup>Where various amounts have been called or there are shares of different kinds, state them separately.

<sup>4</sup>Include what has been received on forfeited as well as on existing shares.

<sup>5</sup>State in respect of each charge, 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 Act, whichever last occurs, or is a company registered under the law of the Commonwealth relating to life insurance 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 translation thereof in English certified in the prescribed manner to be a correct translation. If the said last balance-sheet or 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 said copy as would have been required to be made therein in order to make it comply with the said requirements, and the fact that the said 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.

## EIGHTH SCHEDULE—continued.

*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 or in the case of a prescribed proprietary company or a prescribed private company (as defined in section 397) by both a director and a secretary.

*Certificate.*

I/We<sup>(1)</sup> after having made due inquiries certify—

- (a) that the provisions of the Unclaimed Moneys Act, 1891-1935, as amended relating to unclaimed moneys have been complied with; and
- (b) having made an inspection of the share register, that transfers <sup>have<sup>(1)</sup></sup> been registered since the date of <sup>the last annual return<sup>(1)</sup></sup> ~~have not~~ <sup>the incorporation of the company</sup>
- (c)<sup>(2)</sup> that the company has not since the date of the last annual return<sup>(3)</sup> 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.
- (d)<sup>(4)</sup> 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)<sup>(5)</sup> that to the best of our knowledge and belief the company is an exempt proprietary company and has been an exempt proprietary company within the meaning of section 5 of the Companies Act, 1962 since the—
- { date of the previous return<sup>(6)</sup>  
incorporation of the Company<sup>(6)</sup>  
commencement of the Companies Act, 1962<sup>(6)</sup>
- (f)<sup>(7)</sup> that—
- (i) the company is a prescribed proprietary company<sup>(1)</sup>/a prescribed private company<sup>(1)</sup>; and
- (ii) the company has had no place of business outside the State, has not carried on business in any place outside the State and, to the best of our knowledge and belief, the company has been a prescribed proprietary company<sup>(1)</sup>/a prescribed private company<sup>(1)</sup> since the—
- { date of the previous return<sup>(6)</sup>  
incorporation of the company<sup>(6)</sup>  
commencement of the Companies Act, 1962<sup>(6)</sup>
- (g)<sup>(7)</sup> that, to the best of our knowledge and belief—
- (i) the beneficial interests in the shares in the company are held and since the—
- { date of the previous return<sup>(6)</sup>  
incorporation of the company<sup>(6)</sup>  
commencement of the Companies Act, 1962<sup>(6)</sup>
- have been held solely by natural persons or by other prescribed proprietary companies or prescribed private companies or by a combination of such companies or of natural persons and such companies; and
- (ii) a public company or a foreign company does not own and since such date<sup>(6)</sup>/incorporation<sup>(6)</sup>/commencement<sup>(6)</sup> has not owned a beneficial interest in a share in any of such companies or in any corporation that, by virtue of sub-section (5) of section 6 of the Act, is deemed to be related to any of them.
- (h)<sup>(8)</sup> that on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, all the members of the company agreed pursuant to section 165 of the Companies Act, 1962, not to appoint an auditor for the financial year, 19\_\_\_\_.

Signature

Director<sup>(9)</sup>

Signature

Secretary

(1) Strike out whichever is inapplicable.

(2) Strike out this paragraph if the company is not a proprietary company or a private company.

(3) In the case of the first annual return of a proprietary company or a private company strike out the words "last annual return" and substitute therefor the words "incorporation of the company".

(4) Strike out this paragraph except in the case of a proprietary company or a prescribed private 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 this paragraph if inapplicable. Note this paragraph is only applicable to a prescribed proprietary company or a prescribed private company.

(8) Strike out this paragraph if inapplicable. Note this paragraph is only applicable to an exempt proprietary company.

(9) NOTE.—A Certificate signed by the same person in the capacity of both director and secretary will not be accepted. See section 132 (5).

## EIGHTH SCHEDULE—continued.

Particulars of the \*Directors, Managers, Secretaries and Auditors of Limited,  
at the date of the Annual Return.

The Present Christian or Other Name or Names and Surname†.	Any Former Christian or Other Name or Names or Surname.	Usual Address‡.	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			

\* "Director" includes any person who occupies the position of a director by whatever name called and any person in accordance with those directions or instructions the directors of a company are accustomed to act.

† In the case of a corporation its corporate name and registered or principal office should be shown.

‡ In the case of directors the address given must be the usual residential address. See s. 134 (2) (a).

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 160 of the Companies Act, 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 throughout so as to make one total to agree with that stated in the summary to have been taken up.

† When the shares are of different classes these columns 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.

EIGHTH SCHEDULE—*continued.**No-Liability Companies.*

Particulars as to calls and sales of forfeited shares (to be given only in the case of a no-liability company)—

- (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, in the case of a first return, since 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 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 incorporation ; and
- (e) the number of shares disposed of pursuant to subsection (3) of section 324 of the Companies Act, 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]

## 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 ;
    - (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.

Sections, 162,  
341.

U.K. Eighth  
Schedule.  
Vic. 9th  
Schedule.  
S.A. ss.  
143-145, 147

NINTH SCHEDULE—*continued.**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 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 those 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 ;
  - (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 connection 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 method 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 subsection (5) of section 6 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 so deemed to be related to the company owns a controlling interest but not being any loan to which section 125 does not apply by reason of the operation of paragraph (f) of subsection (1) of that section ;

NINTH SCHEDULE—*continued*.

- (iv) other debts owing to the company,  
and where any amounts or debts shown under any of such headings include any sums which consist, or are in the nature, of interest, accommodation charges, service charges, maintenance charges or insurance 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 Act (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 Act 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 Act, and where any of those assets are sold, the said 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.
- (3) Sub-clause (1) of this clause shall not apply—
- (a) to assets for which the figures relating to the period beginning with the commencement of this Act 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

NINTH SCHEDULE—*continued.*

- (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) thereof.
- (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 any 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 State whether it has or has not established a place of business in the State, it shall be 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 shall not apply to a subsidiary which would not be a subsidiary but for the operation of subparagraph (i) or (ii) of paragraph (a) of subsection (1) of section 6.

*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 Act, 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.

## TENTH SCHEDULE.

Section 184.

## 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 subsection (5) of section 6 to be related to that corporation as compensation for loss of office or as consideration for, or in connection 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 and the number, description and amount of marketable securities in the offeror corporation held by or on behalf of each such director or, in the case of a director where none are so held, contain a statement to that effect ;
  - (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 and each of the directors thereof, or, if none are so held, contain a statement to that effect ;
  - (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 paragraphs 20 and 23 in Part II of the Fifth Schedule ; and
    - (ii) specify details of any alterations in the capital structure of the offeror corporation or of any subsidiary 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 ; and
    - (iii) set out whether or not there has been any material change in the financial position of the offeror corporation since the date of the last balance sheet laid before the corporation in general meeting and, if so, particulars of such change.
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.

TENTH SCHEDULE—*continued.*

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 connection 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 by virtue of subsection (5) of section 6 is deemed to be related to that corporation as compensation for loss of office or as consideration for, or in connection with, his retirement from office and if so, particulars of the proposed payment or benefit in respect of each such director;
- (b) whether or not there is any other agreement or arrangement made between the offeror corporation and any of the directors of the offeree corporation in connection 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 a party 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.

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 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.

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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

TENTH SCHEDULE—*continued.*

- (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 ;
- (d) whether or not it is proposed in connection with the take-over scheme that any payment or other benefit shall be made or given to any director of the offeree corporation or of any other corporation which by virtue of subsection (5) of section 6 is deemed to be related to that corporation as compensation for loss of office or as consideration for, or in connection with, his retirement from office and, if so, particulars of the proposed payment or benefit ;
- (e) whether or not there is any other agreement or arrangement made between any director of the offeree corporation and any other person in connection with or conditional upon the outcome of the take-over scheme and, if so, particulars of any such agreement or arrangement ;
- (f) whether 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.