



ANNO VICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1972

No. 52 of 1972

An Act to amend the Companies Act, 1962-1971

[Assented to 27th April, 1972]

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

1. (1) This Act may be cited as the "Companies Act Amendment Act, 1971-1972." Short title.

(2) The Companies Act, 1962-1971, as amended by this Act, may be cited as the "Companies Act, 1962-1972".

(3) The Companies Act, 1962-1971, is hereinafter referred to as "the principal Act".

2. (1) This Act shall come into operation on a day to be fixed by proclamation. Commencement.

(2) The Governor may in the proclamation made for the purposes of subsection (1) of this section suspend the operation of any specified portion of this Act until a date specified in the proclamation or a date to be fixed by subsequent proclamation.

3. Section 3 of the principal Act is amended—

Arrangement.

(a) by striking out the passage "PART I.—Preliminary, ss. 1-6." and inserting in lieu thereof the passage "PART I.—Preliminary, ss. 1-6a.";

(b) by inserting after the passage "DIVISION III—Shares, ss. 54-69." the passage "DIVISION IIIA—Substantial Shareholdings, ss. 69a-69n:";

and

(c) by striking out the passage:—

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:

and inserting in lieu thereof the passage:—

PART VI—Accounts and Audit, ss. 161-167c—

DIVISION I—Preliminary, s. 161:

DIVISION II—Accounts, ss. 161a-164:

DIVISION III—Audit, ss. 165-167b:

DIVISION IV—Special Provisions relating to Banking
and Life Insurance Corporations,
s. 167c:

PART VIA—Special Investigations, ss. 168-180aa:

PART VIB—Take-overs, ss. 180a-180za.

Amendment of
principal Act,
s. 4—
Repeal and
savings.

4. Section 4 of the principal Act is amended by striking out subsections (5) and (6).

Amendment of
principal Act,
s. 5—
Interpretation.

5. Section 5 of the principal Act is amended—

(a) by striking out from subsection (1) the definition of "books" and inserting in lieu thereof the following definition:—

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

(b) by inserting after the definition of "creditors' voluntary winding up" in subsection (1) the following definition:—

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

(c) by striking out from subsection (1) the definition of "emoluments" and inserting in lieu thereof the following definition:—

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

(d) by inserting after the definition of "no-liability company" in subsection (1) the following definition:—

"non-current liability" means a liability that is not a current liability;;

(e) by inserting immediately after paragraph (b) of the definition of "officer" in subsection (1) and before the word "and" immediately preceding paragraph (c) of that definition the following paragraph:—

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

(f) by inserting after the passage "for a period" in the definition of "profit and loss account" in subsection (1) the passage "and, if the corporation concerned is engaged in the development or exploration of natural resources, also includes an operations account or any like account and a development account or any like account";

(g) by inserting immediately after the definition of "Registrar" in subsection (1) the following definition:—

"related corporation", in relation to a corporation, means a corporation that is deemed to be related to the first-mentioned corporation by virtue of subsection (5) of section 6 of this Act;;

(h) by inserting after the definition of "Table B" in subsection (1) the following definition:—

"the profit or loss" means—

(a) in relation to a corporation that—

(i) is not a holding company;

or

(ii) is a holding company for which group accounts are not required—

the profit or loss resulting from the operations of that corporation;

(b) in relation to a corporation that is a holding company for which group accounts are required—the profit or loss resulting from the operations of that corporation;

and

(c) in relation to a corporation referred to paragraph (b) and its subsidiaries—the profit or loss resulting from the operations of the group of companies of which the corporation is the holding company;;

and

(i) by inserting after the definition of "unlimited company" in subsection (1) the following definition:—

"voting share", in relation to a body corporate, means an issued share in the body corporate not being—

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

or

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

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

(ii) upon a proposal to reduce the share capital of the body corporate;

- (iii) upon a proposal that affects rights attached to the share;
- (iv) upon a proposal to wind up the body corporate;
- (v) upon a proposal for the disposal of the whole of the property, business and undertaking of the body corporate;
- (vi) during the winding up of the body corporate.

6. The following section is enacted and inserted in the principal Act immediately after section 6 thereof:—

Enactment of s. 6a of principal Act.

6a. (1) The following subsections have effect for the purposes of Division IIIA of Part IV, sections 126 and 127, and for the purposes of Part VI B.

Interests in shares.

(2) Where the property subject to a trust consists of or includes shares and a person knows or has reasonable grounds for believing—

(a) that he has an interest under the trust;
and

(b) that the property subject to the trust consists of or includes those shares,

he shall be deemed to have an interest in those shares.

(3) Where a right (being a right or an interest described in the definition of “interest” in section 76 or in the definition of that word in the corresponding provision of the law of another State or of a Territory of the Commonwealth)—

(a) was issued or offered to the public for subscription or purchase, or the public was invited to subscribe for or purchase such a right and the right was so subscribed for or purchased;

or

(b) was issued for the purposes of an offer to the public by and is held by the management company, within the meaning of that section or corresponding provision,

that right does not constitute an interest in a share.

(4) Where a body corporate has an interest in a share and—

(a) the body corporate is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of a person in relation to that share;

(b) a person has a controlling interest in the body corporate;

or

(c) a person is, the associates of a person are, or a person and his associates are, entitled to exercise or control the exercise of not less than fifteen per centum of the votes attached to the voting shares in the body corporate,

that person shall be deemed to have an interest in that share.

(5) For the purposes of paragraph (c) of subsection (4), a person is an associate of another person if the first-mentioned person is—

(a) a corporation that, by virtue of subsection (5) of section 6, is deemed to be related to that other person;

(b) a person in accordance with whose directions, instructions or wishes that other person is accustomed or is under an obligation, whether formal or informal, to act in relation to the share referred to in subsection (4);

(c) a person who is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that other person in relation to that share;

(d) a body corporate that is, or the directors of which are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that other person in relation to that share;

or

(e) a body corporate in accordance with the directions, instructions or wishes of which, or of the directors of which, that other person is under an obligation, whether formal or informal, to act in relation to that share.

(6) Where a person—

(a) has entered into a contract to purchase a share;

(b) has a right, otherwise than by reason of having an interest under a trust, to have a share transferred to himself or to his order, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not;

(c) has the right to acquire a share, or an interest in a share, under an option, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not;

or

- (d) is entitled (otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of a corporation or of a class of its members) to exercise or control the exercise of a right attached to a share, not being a share of which he is the registered holder,

that person shall be deemed to have an interest in that share.

(7) A person shall not be deemed not to have an interest in a share by reason only that he has the interest in the share jointly with another person.

(8) It is immaterial, for the purposes of determining whether a person has an interest in a share, that the interest cannot be related to a particular share.

(9) There shall be disregarded—

- (a) an interest in a share if the interest is that of a person who holds the share as bare trustee;
- (b) an interest in a share of a person whose ordinary business includes the lending of money if he holds the interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money;
- (c) an interest of a person in a share, being an interest held by him by reason of his holding a prescribed office;

and

- (d) a prescribed interest in a share, being an interest of such person, or of the persons included in such class of persons, as is prescribed.

(10) An interest in a share shall not be disregarded by reason only of—

- (a) its remoteness;
- (b) the manner in which it arose;
- or
- (c) the fact that the exercise of a right conferred by the interest is or is capable of being made subject to restraint or restriction.

7. Section 9 of the principal Act is amended by striking out subsections (1), (2), (3), (4), (5) and (6).

Amendment of
principal Act,
s. 9—
Companies
Auditors
Board.

8. Section 14 of the principal Act is amended by striking out subsection (3) and inserting in lieu thereof the following subsection:—

Amendment of
principal Act,
s. 14—
Formation of
companies.

(3) An association or partnership consisting—

(a) in the case of an association or partnership formed for the purpose of carrying on any profession or calling declared by proclamation of the Governor published in the *Gazette* to be a profession or calling which is not customarily carried on in the Commonwealth by a corporation—of more than one hundred persons;

or

(b) in any other case, of more than twenty persons,

which has for its object the acquisition of gain by the association or partnership or individual members thereof shall not be formed unless it is incorporated under this Act or is formed in pursuance of some other Act or letters patent.

Repeal of s. 25 of principal Act and enactment of section in its place.

Registration of unlimited company as limited, etc.

9. Section 25 of the principal Act is repealed and the following section is enacted and inserted in its place:—

25. (1) Subject to this section—

(a) an unlimited company may convert to a limited company if it was not previously a limited company that became an unlimited company in pursuance of paragraph (d);

(b) a no-liability company all the issued shares in which are fully paid-up may convert to a company limited by shares;

(c) a company limited by guarantee may convert to a company limited both by shares and guarantee;

and

(d) a limited company may convert to an unlimited company if it was not previously an unlimited company that became a limited company in pursuance of paragraph (a) or any corresponding previous enactment.

(2) Where a company applies in writing to the Registrar for a change of status as provided by subsection (1) and, subject to subsections (8) and (9) of section 28 as applied by subsection (7), lodges with the application the prescribed documents relating to the application, the Registrar shall, upon registration of such prescribed documents so lodged as are registrable under this Act, issue to the company a certificate of incorporation—

(a) appropriate to the change of status applied for;

and

(b) specifying, in addition to the particulars prescribed in respect of a certificate of incorporation of a company of that status, that the certificate is issued in pursuance of this section,

and, upon the issue of such a certificate of incorporation the company shall be deemed to be a company having the status specified therein.

(3) Where the status of a company is changed in pursuance of this section, notice of the change of status shall be published in such manner (if any) as the Registrar directs.

(4) In subsection (2) "prescribed documents" in relation to an application referred to in that subsection means—

(a) a printed copy of a special resolution of the company—

(i) resolving to change the status of the company and specifying the status sought;

(ii) making such alterations to the memorandum of the company as are necessary to bring the memorandum into conformity with the requirements of this Act relating to the memorandum of a company of the status sought;

(iii) making—where the company has registered articles—such alterations and additions to the articles, if any, as are necessary to bring the articles into conformity with the requirements of this Act relating to the articles of a company of the status sought;

(iv) adopting—where the company has no registered articles—such articles, if any, as are required by this Act to be registered in respect of a company of the status sought or are proposed by the company as the registered articles of the company upon the change in its status;

and

(v) changing the name of the company to a name by which it could be registered if it were a company of the status sought;

(b) where, by a special resolution referred to in paragraph (a), the memorandum of the company is altered or the articles of the company are altered or added to, or articles are adopted by the company—a printed copy of the memorandum as altered, the articles as altered or added to, or the articles adopted, as the case may be;

and

(c) in the case of an application by a limited company to convert to an unlimited company—

(i) the prescribed form of assent to the application subscribed by or on behalf of all the members of the company;

and

(ii) a statutory declaration by a director or secretary of the company verifying that the persons by whom or on whose behalf such a form of assent is subscribed constitute the whole membership of the company and, if a member has not subscribed the form himself, that the director or secretary making the declaration has taken all reasonable steps to satisfy himself that each person who subscribed the form was lawfully empowered so to do.

(5) The provisions of subsections (2) to (6), both inclusive, of section 21 do not apply to or in relation to an application under this section or to any prescribed documents in relation to the application.

(6) A special resolution passed for the purposes of an application under this section shall take effect only upon the issue under this section of a certificate of incorporation of the company to which the resolution relates.

(7) With such modifications as may be necessary, section 28 (except subsection (1)) applies to and in respect of the proposal, passing and lodging, and the cancellation or confirmation by the Court, of a special resolution relating to a change of status as if it were a special resolution under that section.

(8) A change in the status of a company in pursuance of this section does not operate—

(a) to create a new legal entity;

(b) to prejudice or affect the identity of the body corporate constituted by the company or its continuity as a body corporate;

(c) to affect the property, or the rights or obligations, of the company;

or

(d) to render defective any legal proceedings by or against the company,

and any legal proceedings that could have been continued or commenced by or against it prior to the change in its status may, notwithstanding the change in its status, be continued or commenced by or against it after the change in its status.

10. Section 26a of the principal Act is repealed.

Repeal of
s. 26a of
principal Act.

11. Section 42 of the principal Act is amended—

Amendment of
principal Act,
s. 42—
Registration
of prospectus.

(a) by striking out the word “and” immediately preceding paragraph (c) of subsection (2);

(b) by inserting after paragraph (c) of subsection (2) the following paragraph:—

and

(d) in the case of a prospectus pursuant to which the public is to be invited to deposit money with, or to lend money to, a corporation which is a subsidiary of another corporation—

(i) the prospectus contains a statement as to whether or not that other corporation is under any liability to repay those moneys or to pay any interest thereon;

and

(ii) where that other corporation is so stated to be under such liability, the prospectus also gives full particulars of the nature and extent of that liability, of the circumstances under which that liability arose, and the manner in which that liability is to be discharged;

and

(c) by inserting after subsection (2) the following subsection:—

(2a) The Registrar may refuse to register a copy of a prospectus if, in the opinion of the Registrar, any statement contained therein, or any portion of its contents, is misleading in the form or context in which it is included.

12. The following new Division is enacted and inserted in the principal Act immediately after section 69 thereof:—

Enactment of
Division IIIA
of Part IV
of principal
Act—

DIVISION IIIA—SUBSTANTIAL SHAREHOLDINGS

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

Application
and interpreta-
tion of
Division.

(2) A reference to a company is a reference—

(a) to a company all or any of the shares in which are listed for quotation on the official list of a Stock Exchange in Australia;

(b) to a body corporate, being a body incorporated in the State, that is for the time being declared by the Governor by notice published in the *Gazette*, to be a company for the purposes of this Division;

or

(c) to a body, not being a body corporate, formed in the State, that is for the time being declared by the Governor, by notice published in the *Gazette*, to be a company for the purposes of this Division.

(3) The Governor may by notice published in the *Gazette* revoke or vary a notice published under subsection (2) of this section.

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

(5) A reference in the definition of "voting share" in subsection (1) of section 5 to a body corporate includes a reference to a body referred to in paragraph (c) of subsection (2).

Persons
obliged to
comply with
Division.

69b. (1) The obligation to comply with this Division extends to all natural persons, whether resident in the State or in Australia or not and whether Australian citizens or not, and to all bodies corporate, whether incorporated or carrying on business in the State or in Australia or not.

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

Substantial
shareholdings
and substantial
shareholders.

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

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

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

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

Substantial shareholder to notify company of his interests.

(2) The notice shall be given—

(a) if the person was a substantial shareholder on the date on which this Division came into operation—within one month after that date;

or

(b) if the person became a substantial shareholder after that date—within fourteen days after becoming a substantial shareholder.

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

69e. (1) Where a substantial shareholder acquires or disposes of an interest in voting shares in a company, or there is any change in the nature of his interest in voting shares in a company, the substantial shareholder shall give notice in writing to the company stating his name and full particulars of the acquisition or disposal of the interest, or the change in the nature of the interest, and of any transaction resulting in the acquisition or disposal of the interest, or the circumstances by reason of which the change in the nature of the interest occurred.

Substantial shareholder to notify company of acquisition or disposal of interest in voting shares, etc.

(2) The notice shall be given within fourteen days after the day on which the interest is acquired or disposed of, or the change in the nature of the interest occurs.

69f. (1) A person who ceases to be a substantial shareholder in a company shall give notice in writing to the company stating his name and the date on which he ceased to be a substantial shareholder and full particulars of the circumstances by reason of which he ceased to be a substantial shareholder.

Person who ceases to be substantial shareholder to notify company.

(2) The notice shall be given within fourteen days after the person ceased to be a substantial shareholder.

References to
operation of
section 6a.

69g. The circumstances required to be stated in a notice under section 69d, 69e or 69f include circumstances by reason of which, having regard to the provisions of section 6a—

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

respectively.

Persons
holding shares
as trustees.

69h. (1) A person who holds voting shares in a company, being voting shares in which a non-resident has an interest, shall—

- (a) give to the non-resident a notice in the prescribed form as to the requirements of this Division;

or

- (b) where the first-mentioned person knows or has reasonable grounds for believing that an interest of the non-resident in the shares is an interest that the non-resident holds for another person, give to the non-resident a notice in the prescribed form as to the requirements of this Division and direct the non-resident to give the notice or a copy of the notice to that other person.

(2) The notice shall be given—

- (a) if the first-mentioned person holds the shares on the date on which this Division came into operation—within fourteen days after that date;

or

- (b) if the first-mentioned person did not hold the shares on that date—within fourteen days after becoming the holder of the shares.

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

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

Registrar may
extend time
for giving
notice under
this Division.

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

69k. (1) A company shall keep a register in which it shall forthwith enter—

Company to
keep register
of substantial
shareholders.

(a) in alphabetical order the names of persons from whom it has received a notice under section 69d;

and

(b) against each name so entered, the information given in the notice and, where it receives a notice under section 69e or 69f, the information given in that notice.

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

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

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

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

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

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

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

or

(b) put upon inquiry as to.

a right of a person to or in relation to a share in the company.

Offences
against certain
sections.

69l. A person who fails to comply with section 69d, 69e or 69f is guilty of an offence.

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

Defence to
prosecutions.

69m. (1) It is a defence to a prosecution for failing to comply with section 69d, 69e or 69f if the defendant proves that his failure was due to his not being aware of a fact or occurrence the existence of which was necessary to constitute the offence and that—

(a) he was not so aware on the date of the information or summons;

(b) he became so aware less than fourteen days before the date of the information or summons;

or

(c) he became so aware not less than fourteen days before the date of the information or summons and gave the notice under the relevant section within fourteen days after becoming so aware.

(2) For the purposes of subsection (1), a person shall in the absence of proof to the contrary be presumed to have been aware at a particular time of a fact or occurrence of which a servant or agent of the person, being a servant or agent having duties or acting in relation to his master's or principal's interest or interests in a share or shares in the company concerned, was aware at that time.

Powers of
court with
respect to
defaulting
substantial
shareholders.

69n. (1) Where a person (in this section referred to as "the substantial shareholder"), is, or at any time after the date on which this Division came into operation has been, a substantial shareholder in a company and has failed to comply with section 69d, 69e or 69f, the Court may, on the application of the Minister, whether or not that failure still continues, make one or more of the following orders—

(a) an order restraining the substantial shareholder from disposing of any interest in shares in the company in which he is or has been a substantial shareholder;

(b) an order restraining a person who is, or is entitled to be registered as, the holder of shares referred to in paragraph (a) from disposing of any interest in those shares;

(c) an order restraining the exercise of any voting or other rights attached to any share in the company in which the substantial shareholder has or has had an interest;

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

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

(3) An order under this section directing the sale of a share may provide that the sale shall be made within such time and subject to such conditions, if any, as the Court thinks fit, including if the Court thinks fit, a condition that the sale shall not be made to a person who is, or, as a result of the sale, would become, a substantial shareholder in the company.

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

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

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

- (a) that the failure of the substantial shareholder to comply as mentioned in subsection (1) was due to his inadvertance or mistake and that the failure ought to be excused;

or

- (b) on any other grounds, the failure ought to be excused.

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

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

(9) Section 311 applies in relation to a share that vests in the Registrar under this section as the first-mentioned section applies in relation to an estate or interest in property referred to in the first-mentioned section.

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

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

(11) Subsection (10) does not affect the powers of the Court in relation to the punishment of contempts of the Court.

Amendment of
principal Act,
s. 74f—
Obligations of
borrowing
corporation.

13. Section 74f of the principal Act is amended by striking out from subsection (5) the passage “subsections (4) to (13), both inclusive, of section 162 and of subsections (1), (2) and (4) of section 167” and inserting in lieu thereof the passage “section 162 (other than subsections (5) and (6)), subsections (1), (2) and (3) of section 162a, section 162c, subsections (1), (2), (3), (4), (5), (6), (8) and (9) of section 167 and section 167c (other than any provision which requires the laying of accounts or group accounts within the meaning of those sections before an annual general meeting).

Amendment of
principal Act,
s. 76—
Interpretation.

14. Section 76 of the principal Act is amended by striking out paragraphs (i), (ii) and (iii) of the definition of “interest” and inserting in lieu thereof the following paragraphs:—

(d) any share in or debenture of a corporation;

(e) any interest in or arising out of a policy of life assurance;

or

(f) an interest in a partnership agreement other than any interest in a partnership agreement that is a prescribed interest or is an interest included in a class of prescribed interests.

Amendment of
principal Act,
s. 80—
Covenants to
be included
in deeds.

15. Section 80 of the principal Act is amended by striking out from paragraph (d) of subsection (1) the passage “subsection (5) of section 38” and inserting in lieu thereof the passage “subsection (7) of section 38”.

16. Section 81 of the principal Act is amended by inserting after the present provisions thereof (which are hereby designated subsection (1) thereof), the following subsection:—

Amendment of principal Act, s. 81—
Interests to be issued by companies only.

(2) Subsection (1) does not apply to or in relation to an offer to the public for purchase of an interest—

(a) that is an interest in a partnership agreement;

and

(b) that was subscribed for or purchased before the commencement of the Companies Act Amendment Act, 1971-1972.

17. Section 83 of the principal Act is amended by inserting after the word “interest” (where first occurring) in subsection (1) the passage “(not being an interest referred to in subsection (2) of section 81 of this Act)”.

Amendment of principal Act, s. 83—
No issue without approved deed.

18. Section 122 of the principal Act is amended—

(a) by striking out from paragraph (a) of subsection (1) the passage “on indictment of an offence” and inserting in lieu thereof the passage “of an indictable offence”;

and

(b) by striking out paragraph (c) of subsection (1) and inserting in lieu thereof the following paragraph:—

(c) of an offence under section 47, section 124, section 180j, section 374b, section 374c or any of the corresponding provisions of the law of another State or of a Territory of the Commonwealth.

Amendment of principal Act, s. 122—
Power to restrain certain persons from managing companies.

19. Section 124 of the principal Act is repealed and the following sections are enacted and inserted in its place:—

Repeal of s. 124 of principal Act and enactment of sections in its place.

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 corporation shall not make improper use of information acquired by virtue of his position as such an officer to gain directly or indirectly an advantage for himself or for any other person or to cause detriment to the corporation.

(3) An officer of a corporation who commits a breach of a provision of this section is—

(a) liable to the corporation for—

(i) profit made by him;

and

(ii) damage suffered by the corporation,

as a result of the breach;

and

Duty and liability of officers.

(b) guilty of an offence against this Act.

Penalty: Two thousand dollars.

(4) This section has effect in addition to and not in derogation from any other enactment or rule of law relating to the duty or liability of a director or officer of a corporation.

Dealings by
officers in
securities.

124a. (1) An officer of a corporation who in or in relation to a dealing in securities of the corporation by himself or another person makes use to gain directly or indirectly an advantage for himself or another person of specific confidential information acquired by virtue of his position as such an officer which if generally known might reasonably be expected to affect materially the value of the subject-matter of the dealing is liable to a person for loss suffered by that person by reason of the payment by him of a consideration in respect of the securities greater than the consideration that would have been reasonable if the information had been generally known at the time of the dealing.

(2) An officer of a corporation is not liable under subsection (1) to a person for loss suffered by that person if that person knew or ought reasonably to have known of the information referred to in subsection (1) before entering into the transaction relating to the dealing in securities of the corporation.

(3) An action for the recovery of the amount of a loss referred to in subsection (1) may not be commenced after the expiration of the period of two years after the date of the completion of the dealing in securities in respect of which the loss was suffered.

(4) In this section "dealing in securities" in relation to a corporation means a transaction relating to—

(a) shares in debentures of or interests within the meaning of section 76 made available by the corporation or by a related corporation;

or

(b) rights or options in respect of the acquisition or disposal of such shares debentures or interests.

Repeal of ss.
126 and 127
of principal Act
and enactment
of sections in
their place.

Register of
directors'
shareholdings,
etc.

20. Sections 126 and 127 of the principal Act are repealed and the following sections are enacted and inserted in their place:—

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

(a) shares in the company or in a related corporation being shares in which the director has an interest and the nature and extent of that interest;

- (b) debentures of or participatory interests made available by the company or a related corporation in which the director has an interest and the nature and extent of that interest;
- (c) rights or options of the director or of the director and another person or other persons in respect of the acquisition or disposal of shares in, debentures of, or participatory interests made available by the company or a related corporation;

and

- (d) contracts to which the director is a party or under which he is entitled to a benefit being contracts under which a person has a right to call for or to make delivery of shares in, debentures of, or participatory interests made available by the company or a related corporation.

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

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

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

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

or

- (d) a nominee of such a subsidiary.

(5) A company shall within seven days after receiving notice from a director under paragraph (a) of subsection (1) of section 127 enter in its register in relation to the director the particulars referred to in subsection (1) including the number and description

of shares debentures participatory interests rights options and contracts to which the notice relates and in respect of shares debentures participatory interests rights or options acquired or contracts entered into after he became a director—

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

and

(b) the date of—

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

or

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

(6) A company shall, within three days after receiving a notice from a director under paragraph (b) of subsection (1) of section 127, enter in its register the particulars of the change referred to in the notice.

(7) A company is not, by reason of anything done under this section, to be taken for any purpose to have notice of or to be upon inquiry as to the right of a person to or in relation to a share in debenture of or participatory interest made available by the company.

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

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

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

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

(12) It is a defence to a prosecution for failing to comply with subsection (1) or (5) in respect of particulars relating to a director if the defendant proves that the failure was due to the failure of the director to comply with section 127 with respect to those particulars.

(13) In this section a reference to a participatory interest is a reference to an interest within the meaning of section 76.

(14) In determining, for the purposes of this section whether a person has an interest in a debenture or participatory interest the provisions of section 6a, except subsections (1) and (3) of that section, have effect and in applying those provisions a reference to a share shall be read as a reference to a debenture or participatory interest.

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

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

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

General duty to make disclosure.

(a) unless the director is the holding company of the company, of such particulars relating to shares debentures participatory interests rights options and contracts as are necessary for the purposes of compliance by the first-mentioned company with the provisions of section 126;

(b) of particulars of any change in respect of the particulars referred to in paragraph (a) of which notice has been given to the company including the consideration (if any) received as a result of the event giving rise to the change;

and

(c) of such events and matters affecting or relating to himself as are necessary for the purposes of compliance by the company with any of the provisions of section 134 or 184 (as in force immediately before the commencement of the Companies Act Amendment Act, 1971-1972) or Part VIB or the Tenth Schedule that are applicable in relation to him.

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

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

(a) in the case of a notice under paragraph (a) of that subsection, within fourteen days after—

(i) the commencement of the Companies Act Amendment Act, 1971-1972;

(ii) the date on which the director became a director;

or

(iii) the date on which the director acquired an interest in the shares debentures participatory interests rights options or contracts,

whichever last occurs;

and

(b) in the case of a notice under paragraph (b) of that subsection, within fourteen days after the occurrence of the event giving rise to the change referred to in that paragraph.

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

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

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

(4) It is a defence to a prosecution for failing to comply with paragraph (a) or (b) of subsection (1) or with subsection (2) if the defendant proves that his failure was due to his not being aware of a fact or occurrence the existence of which was necessary to constitute the offence and that—

(a) he was not so aware on the date of the information or summons;

(b) he became so aware less than fourteen days before the date of the information or summons;

or

(c) he became so aware not less than fourteen days before the date of the information or summons and gave the notice under the relevant subsection within fourteen days after becoming so aware.

(5) For the purposes of subsection (4) a person shall, in the absence of proof to the contrary, be presumed to have been aware at a particular time of a fact or occurrence of which a servant or agent of the person, being a servant or agent having duties or acting in relation to his master's or principal's interest or interests in a share in or a debenture of or a participatory interest made available by the company concerned, was aware at that time.

(6) In this section a reference to a participatory interest is a reference to an interest within the meaning of section 76.

(7) In determining, for the purposes of this section whether a person has an interest in a debenture or participatory interest the provisions of section 6a, except subsections (1) and (3) of that section, have effect and in applying those provisions a reference to a share shall be read as a reference to a debenture or participatory interest.

21. Section 129 of the principal Act is amended by striking out from subsection (2) the passage "section 184." and inserting in lieu thereof the passage "section 184 as in force immediately before the commencement of the Companies Act Amendment Act, 1971-1972".

Amendment of principal Act, s. 129—
Payments to director for loss of office, etc.

22. Section 131 of the principal Act is amended—

(a) by striking out from subsection (1) the passage "the emoluments of the directors of the company or of a subsidiary" and inserting in lieu thereof the passage "the emoluments and other benefits received by the directors of the company or of a subsidiary";

and

Amendment of principal Act, s. 131—
Power to require disclosure of director's emoluments.

- (b) by striking out from paragraph (i) of subsection (1) the passage "total emoluments paid to each of the directors of the company and to each director" and inserting in lieu thereof the passage "total amount of emoluments and other benefits paid to or received by each of the directors of the company and each director".

Amendment of
principal Act,
s. 136—
Annual general
meeting.

23. Section 136 of the principal Act is amended—

- (a) by striking out subsection (2) and inserting in lieu thereof the following subsections:—

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

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

or

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

(2a) A company is not in default in holding an annual general meeting under subsection (1) if, in pursuance of an extension or permission under subsection (2), an annual general meeting is not held within the period or in the calendar year in which it would otherwise be required by subsection (1) to be held, as the case may be, but is held within the extended period or in the calendar year in which under subsection (2) it is permitted to be held.

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

(2c) Where in a calendar year (other than the year of its incorporation or the following year) a company does not hold an annual general meeting, an annual general meeting of the company shall, for the purposes of calculating the period within which the next annual general meeting is, under subsection (1), required to be held, be deemed to have been held on the 31st day of December in that calendar year unless the Registrar otherwise directs or on such other date in that calendar year as the Registrar determines.;

and

- (b) by inserting in subsection (4) after the passage “annual general meeting” the passage “under this section or in complying with any conditions of the Registrar under subsection (2)”.

24. The following section is enacted and inserted in the principal Act immediately after section 159 thereof:—

Enactment of
s. 159a of
principal Act—

159a. (1) A company which is not required by this Act to lodge accounts with the Registrar shall include in or attach to its annual return under section 158 or 159 (as the case may be) a statement relating to the accounts of the company required to be laid before the company at its annual general meeting held on the date to which the return is made up or, if an annual general meeting is not held on that date, the annual general meeting last preceding that date, signed by the auditor of the company—

Certificate.

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

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

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

Penalty: Two hundred dollars. Default penalty.

25. Division I and Division II of Part VI of the principal Act (including the headings to those Divisions) are repealed and the following Divisions are enacted and inserted in their place:—

Repeal of
Divisions I
and II of
Part VI of
principal Act
and enactme
of Divisions
in their place

DIVISION I—PRELIMINARY

161. In this Part and the Ninth Schedule unless the contrary intention appears—

Interpreta-
tions.

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

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

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

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

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

“holding company” means a corporation which is the holding company within the meaning of section 6 of another corporation.

Transitional provision for companies existing before commencement of new provisions.

161aa. (1) The provisions of this Act relating to accounts and audit shall apply to a company that was in existence at the commencement of the Companies Act Amendment Act, 1971-1972, in respect of the first financial year of the company that commences after the commencement of that Act.

(2) The provisions of this Act relating to accounts and audit, as in force immediately before the commencement of the Companies Act Amendment Act, 1971-1972, shall continue to apply to a company that was in existence at the commencement of the Companies Act Amendment Act, 1971-1972, until the commencement of the first financial year of the company that commences after the commencement of that Act.

DIVISION II—ACCOUNTS

Accounts to be kept.

161a. (1) A company shall—

- (a) keep such accounting records as correctly record and explain the transactions and financial position of the company;

(b) keep its accounting records in such a manner as will enable true and fair accounts of the company to be prepared from time to time;

and

(c) keep its accounting records in such a manner as will enable the accounts of the company to be conveniently and properly audited in accordance with this Act.

(2) A company shall retain the accounting records kept under this section for a period of seven years after the completion of the transactions to which they relate.

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

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

(5) The accounting records of the company and any statements and records referred to in subsection (4) shall be kept in written or printed form in the English language or so as to enable the accounting records statements and records to be readily accessible and readily convertible into written or printed form in the English language.

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

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

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

(9) Where a registered company auditor inspects the accounting records or the statements and records referred to in subsection (4) in pursuance of an order of the Court under

subsection (7) he shall not disclose to a person other than the director on whose application the order was made any information acquired by him in the course of his inspection.

Penalty: Two hundred dollars.

(10) If default is made in complying with a provision of this section other than subsection (9) the company, a director of the company who failed to take all reasonable steps to secure compliance by the company with the provision, and every officer of the company who is in default shall be guilty of an offence.

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

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

Financial years
of grouped
companies.

161b. (1) Subject to this section the directors of a holding company that is not a foreign company shall take such steps as are necessary to ensure that—

(a) within twelve months after a corporation becomes a subsidiary of the holding company the financial year of that corporation coincides with the financial year of the holding company;

and

(b) the financial year of each of its other subsidiaries coincides with the financial year of the holding company.

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

(3) Where the directors of a holding company that is not a foreign company are of the opinion that there is good reason why the financial year of any of its subsidiaries should not coincide with the financial year of the holding company, they may apply in writing to the Registrar for an order authorizing

the subsidiary to continue to have or to adopt (as the case requires) a financial year that does not coincide with that of the holding company.

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

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

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

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

(8) The Registrar may make an order granting or refusing the application or granting the application subject to such limitations terms or conditions as he thinks fit, and shall serve a copy of the order on the holding company.

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

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

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

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

(13) Where an application for an order by the Registrar under this section has been refused and there is no appeal, or where there has been an appeal and the appeal has been dismissed, the time within which the directors of the holding company are required to comply with the provisions of subsection (1) in relation to the subsidiary shall be deemed to be the period of twelve months after the date upon which the order of the Registrar is served on the holding company, or where there has been an appeal the period of twelve months after the determination of the appeal.

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

Profit and
loss account
balance-sheet
and group
accounts.

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

(2) Notwithstanding the provisions of subsection (1), the Registrar may, on application made in accordance with a resolution of the directors, and signed on behalf of the company by a director or secretary allow, subject to such conditions as the Registrar thinks fit, a profit and loss account to be made up to a date earlier than six months before the date of the annual general meeting before which it is to be laid.

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

(4) Where, at the end of its financial year, a company is a holding company, the directors of the company shall, subject

to subsection (5), also cause to be made out and laid before the company at its annual general meeting, group accounts dealing with—

(a) the profit or loss of the company and its subsidiaries for their respective last financial years;

and

(b) the state of affairs of the company and its subsidiaries as at the end of their respective last financial years,

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

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

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

(a) that other corporation;

(b) a nominee of that other corporation;

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

or

(d) a nominee of such a subsidiary.

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

(a) to ascertain what action has been taken in relation to the writing off of bad debts and the making of provisions for doubtful debts and to cause all known bad debts to be written off and adequate provision to be made for doubtful debts;

(b) to ascertain whether any current assets (other than current assets to which paragraph (a) applies) are unlikely to realize in the ordinary course of business their value as shown in the accounting records of the company and if so, to cause—

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

or

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

and

(c) to ascertain whether any non-current asset is shown in the books of the company at an amount which, having regard to its value to the company as a going concern, exceeds the amount which it would have been reasonable for the company to spend to acquire that asset as at the end of the financial year and (unless adequate provision for writing down that asset is made) to ensure that the accounts contain such information and explanations as will prevent the accounts from being misleading by reason of the overstatement of the amount of that asset.

(8) Not less than fourteen days before each annual general meeting of a company the accounts of the company and, if it is a holding company for which group accounts are required, the group accounts shall except in the case of a company that in pursuance of section 165a or 165ab did not appoint an auditor to audit those accounts be audited as required by this Part and the auditor's report required by section 167 shall be attached to or endorsed upon the accounts and group accounts.

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

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

(a) the profit and loss account is drawn up so as to give a true and fair view of the profit or loss of the company for the financial year;

and

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

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

(a) the profit or loss of the company and its subsidiaries for their respective last financial years;

and

(b) the state of affairs of the company and its subsidiaries as at the end of their respective last financial years,

so far as they concern members of the holding company.

(12) The directors of a company shall cause to be attached to any accounts of the company and, if it is a holding company, group accounts to be laid before the company at its annual general meeting, before the auditor reports on the accounts or group accounts under this Part, a statement signed by the principal accounting officer of the company or other person in charge of the preparation of the company's accounts or of the group accounts, stating whether to the best of his knowledge and belief the accounts or group accounts as the case may be give a true and fair view of the matters required by this section to be dealt with in the accounts or group accounts as the case may be.

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

Directors' reports.

(a) the names of the directors in office at the date of the report;

(b) the principal activities of the company in the course of the financial year and any significant change in the nature of those activities during that period;

(c) the net amount of the profit or loss of the company for the financial year after provision for income tax;

(d) the amounts and particulars of any material transfers to or from reserves or provisions during the financial year;

- (e) where, during the financial year, the company has issued any shares or debentures—the purposes of the issue, the classes of shares or debentures issued, the number of shares of each class and the amount term and rate of debentures of each class, and the terms of issue of each class of the shares;
- (f) the amount, if any, which the directors recommend should be paid by way of dividend, and any amounts which have been paid or declared by way of dividend since the end of the previous financial year, indicating which of those amounts (if any) have been shown in a previous report under this subsection or subsection (2) or under a corresponding previous enactment;
- (g) whether the directors (before the profit and loss account and balance-sheet were made out) took reasonable steps to ascertain what action had been taken in relation to the writing off of bad debts and the making of provisions for doubtful debts, and to cause all known bad debts to be written off and adequate provision to be made for doubtful debts;
- (h) whether at the date of the report the directors are aware of any circumstances which would render the amount written off for bad debts or the amount of the provision for doubtful debts inadequate to any substantial extent (and, if so, giving particulars of the circumstances);
- (i) whether the directors (before the profit and loss account and balance-sheet were made out) took reasonable steps to ascertain whether any current assets (other than current assets to which paragraph (g) applies) were unlikely to realize in the ordinary course of business their value as shown in the accounting records of the company and, if so, to cause—
- (i) those assets to be written down to an amount that they might be expected so to realize;
 - or
 - (ii) adequate provision to be made for the difference between the amount of the value as so shown and the amount that they might be expected so to realize;
- (j) whether at the date of the report the directors are aware of any circumstances which would render the values attributed to current assets in the accounts misleading (and, if so, giving particulars of the circumstances);

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

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

and

(ii) any contingent liability which has arisen since the end of the financial year (and if so, stating the general nature thereof and, so far as practicable, the maximum amount, or an estimate of the maximum amount, for which the company could become liable in respect thereof);

(l) whether any contingent or other liability has become enforceable, or is likely to become enforceable, within the period of twelve months after the end of the financial year which, in the opinion of the directors, will or may affect the ability of the company to meet its obligations when they fall due (and, if so, giving particulars of any such liability);

(m) whether at the date of the report the directors are aware of any circumstances not otherwise dealt with in the report or accounts which would render any amount stated in the accounts misleading (and, if so, giving particulars of the circumstances);

(n) whether the results of the company's operations during the financial year were, in the opinion of the directors, substantially affected by any item, transaction or event of a material and unusual nature (and, if so, giving particulars of that item, transaction or event and the amount or the effect thereof, if known or reasonably ascertainable);

and

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

(2) The directors of a holding company shall cause to be attached to all group accounts made out under subsection (4) of section 162, a report made, in accordance with a resolution

of the directors, and signed by not less than two of the directors (or in the case of a proprietary company that has only one director, by that director) with respect to the profit or loss of the group of companies of the holding company for the financial year, and the state of affairs of the group of companies of the holding company as at the end of the financial year of the holding company, stating—

- (a) the names of the directors of the holding company in office at the date of the report;
- (b) the principal activities of the corporations in the group in the course of the financial year and any significant change in the nature of those activities during that period;
- (c) the net amount of the consolidated profit or loss of the group for the financial year after provision for income tax, showing separately the extent to which each corporation in the group contributed to that consolidated profit or loss, and after deducting from that consolidated profit or loss any amounts which should properly be attributed to any person other than a corporation in the group;
- (d) the names of any subsidiaries acquired or disposed of during the financial year, the consideration for each such acquisition or disposal and the amount in each case of the net tangible assets of the subsidiary acquired or disposed of and, in the case of a subsidiary not being a wholly owned subsidiary, the extent of the holding company's interest therein;
- (e) the amounts and particulars of any material transfers to or from reserves or provisions of any corporation in the group during the financial year;
- (f) where, during the financial year, any corporation in the group has issued any shares or debentures—the purposes of the issue, the classes of shares or debentures issued, the number of shares of each class and the amount term and rate of debentures of each class, and the terms of issue of each class of the shares;
- (g) the amount, if any, which the directors of the holding company recommend should be paid by way of dividend, and any amounts which have been paid or declared by way of dividend since the end of the previous financial year of the holding company, indicating which of those amounts (if any) have been shown in a previous report under this subsection or subsection (1) or under a corresponding previous enactment;

- (h) the amount, if any, of dividends paid to or declared in favour of the holding company by each of the subsidiaries since the end of the previous financial year and up to the date of the report except so far as any such dividends are shown in the group accounts in accordance with the Ninth Schedule;
- (i) whether, so far as debts owing to the holding company are concerned, the directors of the holding company (before the profit and loss account and balance-sheet were made out) took reasonable steps to ascertain what action had been taken in relation to the writing off of bad debts and the making of provisions for doubtful debts, and to cause all known bad debts to be written off and adequate provision to be made for doubtful debts;
- (j) whether at the date of the report the directors of the holding company are aware of any circumstances which would render the amount written off for bad debts, or the amount of the provisions for doubtful debts, in the group of companies inadequate to any substantial extent (and, if so, giving particulars of the circumstances);
- (k) whether the directors of the holding company (before the profit and loss account and balance-sheet were made out) took reasonable steps to ascertain whether the current assets of the holding company (other than current assets to which paragraph (i) applies) were unlikely to realize in the ordinary course of business their value as shown in the accounting records of the company, and, if so, to cause—
 - (i) those assets to be written down to an amount that they might be expected so to realize;
 - or
 - (ii) adequate provision to be made for the difference between the amount of the value as so shown and the amount that they might be expected so to realize;
- (l) whether at the date of the report the directors of the holding company are aware of any circumstances which would render the values attributed to current assets in the group accounts misleading (and, if so, giving particulars of the circumstances);
- (m) whether there exists at the date of the report—
 - (i) any charge on the assets of any corporation in the group which has arisen since the end of the financial year and secures the liabilities

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

and

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

and

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

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

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

(4) The provisions of—

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

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

(5) Where, at the end of its financial year, a company is the subsidiary of another corporation, the directors of the company shall state in, or in a note on or statement annexed to, the company's accounts laid before the company at its annual general meeting, the name of the corporation that they believe to be the company's ultimate holding company and, if known to them, the country in which that holding company is incorporated.

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

- (a) in the case of an option so granted during the financial year or since the end thereof—
 - (i) the name of the person to whom the option was granted, or where it was granted generally to all the holders of shares or debentures or of a class of shares or debentures of that company or of another corporation, that the option was so granted;
 - (ii) the number and classes of shares in respect of which the option was granted;
 - (iii) the date of expiration of the option;
 - (iv) the basis upon which the option is or was to be exercised;

and

(v) whether any person entitled to exercise the option had or has any right, by virtue of the option, to participate in any share issue of any other corporation;

(b) particulars of shares issued, during the financial year or since the end thereof, by virtue of the exercise of any option;

and

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

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

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

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

(10) Every statement, report or other document relating to the affairs of a company or any of its subsidiaries attached to or included with a report of the directors laid before the company at its annual general meeting or sent to the members under section 164 (not being a statement, report or document required by this Act to be laid before the company in general meeting) shall, for the purposes of section 375, be deemed to be part of that last-mentioned report.

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

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

or

- (d) a nominee of such a subsidiary.

162b. (1) Subject to subsection (6) the directors of a holding company shall not cause to be made out the group accounts referred to in subsection (4) of section 162 or make the report referred to in subsection (2) of section 162a unless they have received from each subsidiary its audited accounts, the statements required under section 162, directors' report in accordance with section 162a and auditor's report in accordance with section 167.

Group accounts not to be issued, etc., until receipt of subsidiaries accounts, etc.

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

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

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

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

(6) Where the directors of a holding company, having taken all such steps as are reasonably available to them, are unable to obtain from the directors of a subsidiary any accounts, report or other information required for the preparation of the group accounts and the directors' report of the group, they may cause to be made out the group accounts and make the directors' report without incorporating therein or including therewith the first-mentioned accounts report or other information relating to the subsidiary but with such qualifications and explanations as are necessary to prevent the group accounts and report from being misleading.

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

Relief from requirements as to form and content of accounts and reports.

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

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

(3) The Registrar shall not make an order under subsection (1) or (2) unless he is of the opinion that compliance with the requirements of this Act would render the accounts or group accounts or report (as the case may be) misleading or

inappropriate to the circumstances of the company or would impose unreasonable burdens on the company or any officer of the company.

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

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

or

(b) in the case of an order under subsection (2) may from time to time revoke or suspend the operation of the order.

(5) In determining any application under subsection (1) or making, revoking, or suspending the operation of, any order made under this section the Registrar shall take into account any views that he knows to be held by the persons who in the other States and Territories of the Commonwealth exercise under the corresponding laws of those States and Territories functions similar to those exercised by the Registrar under this section.

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

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

(8) A person aggrieved by—

(a) an order made under subsection (1) or subsection (2) of this section;

(b) the revocation or suspension of the operation of such an order;

or

(c) the refusal of an application for an order or for revocation or suspension of the operation of an order,

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

Failure to
comply with
this Division.

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

Penalty: One thousand dollars or imprisonment for six months.

(2) In any proceedings against a person for failure to take all reasonable steps to comply with or to secure compliance with, the preceding provisions of this Division relating to the form and content of the accounts of a company or group accounts of a holding company by reason of an omission from the accounts or group accounts, it is a defence to prove that the omission was not intentional and that the information omitted was immaterial and did not affect the giving of a true and fair view of the matters required by section 162 to be dealt with in the accounts or group accounts as the case may be.

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

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

Members of
company
entitled to
balance-sheet,
etc.

164. (1) A company shall, not less than fourteen days before each annual general meeting, send a copy of all accounts and, if it is a holding company, group accounts which are to be laid before the company at the meeting accompanied by a copy of the statements required under section 162, a copy of the directors' report required under section 162a and a copy of the auditor's report or reports required by section 167, to all persons entitled to receive notice of general meetings of the company.

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

(3) If default is made in complying with subsection (1) or subsection (2), the company and every officer of the company who is in default shall be guilty of an offence against this Act, unless it be proved that the person concerned had already been furnished with a copy of the accounts or group accounts and all documents referred to in subsection (1) or (2) before the default was made.

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

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

DIVISION III—AUDIT

165. (1) Subject to this section, a person shall not—

**Qualifications
of auditors.**

(a) consent to be appointed as auditor of a company;

(b) act as auditor of a company;

or

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

if the person—

(d) is not a registered company auditor;

(e) is indebted in an amount exceeding one thousand dollars to the company or to a related corporation;

or

(f) except where the company is an exempt proprietary company—

(i) is an officer of the company;

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

or

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

Penalty: Two hundred dollars. Default penalty.

(2) A firm shall not—

(a) consent to be appointed as auditor of a company;

(b) act as auditor of a company;

or

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

unless—

(d) at least one member of the firm is ordinarily resident in a State or Territory of the Commonwealth;

(e) all the members of the firm ordinarily so resident are registered company auditors;

(f) where the business name under which the firm is carrying on business is not registered under the Business Names Act, 1963, a return in the prescribed form showing the full names and addresses of all the members of the firm has been lodged with the Registrar;

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

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

(i) an officer of the company;

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

or

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

and

(i) no officer of the company receives any remuneration from the firm for acting as a consultant to it on accounting or auditing matters.

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

(a) if he is an officer of a related corporation;

or

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

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

(5) For the purposes of this section, a person shall not be deemed to be an officer of a company by reason only of his having been appointed as auditor of that company or of a related corporation or, for any purpose relating to taxation, a public officer of that company or a related corporation or by reason only of his being or having been authorized to accept on behalf of the company or a related corporation service of process or any notices required to be served on the company or related corporation.

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

(7) Where a firm has been appointed as auditor of a company, and the members constituting the firm change by reason of the death, retirement or withdrawal of a member or by reason of the admission of a new member, the firm as newly constituted shall, if it is not disqualified from acting as auditor of the company by virtue of subsection (2), be deemed to be appointed under section 166 as auditor of the company and that appointment shall be taken to be an appointment of all persons who are members of the firm as newly constituted.

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

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

Penalty: Two hundred dollars.

(10) Where it is, in the opinion of the Board, impracticable for an exempt proprietary company to obtain the services of a registered company auditor as auditor of the company in view of the place where the company carries on business, a person who is, in the opinion of the Board, suitably qualified or experienced and is approved by the Board for the purposes of this Act in relation to the audit of the company's accounts, may be appointed as auditor of the company, subject to such terms and conditions as are specified in the approval.

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

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

(a) amend, revoke or vary the terms and conditions of its approval;

or

(b) determine the appointment of that person as auditor of the company.

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

(14) A person shall not—

(a) if he has been appointed auditor of a company—
wilfully disqualify himself while the appointment continues from acting as auditor of the company;

or

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

Penalty: One hundred dollars.

165a. (1) The directors of an exempt proprietary company that is an unlimited company are not required to appoint an auditor under subsection (1) of section 165b or subsection (1) of section 166 if—

Appointment of auditor in relation to exempt proprietary company.

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

and

- (b) all members of the company have agreed on a date not more than fourteen days after the commencement of this Part, or the incorporation of the company, that it is not necessary for the company to appoint an auditor.

(2) An exempt proprietary company that is an unlimited company is not required to appoint an auditor under subsection (3) of section 166 at an annual general meeting, whether that meeting is the first annual general meeting held after the company is incorporated as, or converts to, such a company or is a subsequent annual general meeting, if—

- (a) at the date of the annual general meeting no member of the company is a person other than a natural person, or an exempt proprietary company that is an unlimited company or a corporation that, under the law of another State, or of a Territory of the Commonwealth, is an exempt proprietary company that is an unlimited company;

and

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

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

(4) An exempt proprietary company that at an annual general meeting did not appoint an auditor shall at the next annual general meeting of the company appoint an auditor unless the conditions referred to in subsection (2) are satisfied.

(5) Within one month after—

(a) a company that by reason of the circumstances referred to in subsection (1) or (2) does not have an auditor ceases to be an exempt proprietary company or ceases to be an unlimited company;

or

(b) a body corporate other than—

(i) an exempt proprietary company that is an unlimited company;

or

(ii) a corporation that under the law of another State or of a Territory of the Commonwealth is an exempt proprietary company that is an unlimited company,

becomes a member of an exempt proprietary company that by reason of the circumstances referred to in subsection (1) or (2) does not have an auditor,

the directors of the company shall appoint (unless the company at a general meeting has appointed) a person or persons or a firm as auditor or auditors of the company.

(6) A person or firm appointed as auditor of a company under subsection (5) shall, subject to this Part, hold office until the next annual general meeting of the company.

Exempt
proprietary
company need
not appoint an
auditor in
certain
circumstances.

165ab. (1) Notwithstanding the provisions of this Part, an exempt proprietary company that is not an unlimited company is not required to appoint an auditor at an annual general meeting, whether that meeting is the first annual general meeting held after the company is incorporated as, or becomes, such a company or is a subsequent annual general meeting, if not more than one month before the annual general meeting all the members of the company have agreed that it is not necessary for the company to appoint an auditor.

(2) The directors of an exempt proprietary company that is not an unlimited company are not required to comply with subsection (1) of section 165b or subsection (1) of section 166 if all the members of the company have agreed on a date not later than fourteen days after the date of commencement of this Part or of the incorporation of the company that it is not necessary to appoint an auditor.

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

(4) An exempt proprietary company that is not an unlimited company and that at an annual general meeting did not appoint an auditor shall at the next annual general meeting of the company appoint an auditor unless the conditions referred to in subsection (1) are satisfied.

(5) The directors of a company that by reason of the circumstances referred to in subsection (1) or (2) does not have an auditor shall lodge with the Registrar with each annual return under section 158 or 159 a copy of all accounts and group accounts (if any) laid before the company at the annual general meeting held on the date to which the return is made up, or if an annual general meeting is not held on that date the annual general meeting last preceding that date and shall include in or attach to each annual return a certificate signed by not less than two directors of the company stating whether—

(a) the company has, in respect of the financial year to which the return relates—

(i) kept such accounting records as correctly record and explain the transactions and financial position of the company;

(ii) kept its accounting records in such a manner as would enable true and fair accounts of the company to be prepared from time to time;

and

(iii) kept its accounting records in such a manner as would enable the accounts of the company to be conveniently and properly audited in accordance with this Act;

(b) the accounts have been properly prepared by a competent person;

and

(c) the accounts give a true and fair view of the profit or loss and state of affairs of the company as at the end of the financial year.

(6) Where—

(a) directors of a company state in a certificate in respect of a financial year of a company that—

(i) the company did not keep such accounting records as are required by this Act to be kept;

(ii) the accounting records of the company were not kept in the manner required by this Act;

(iii) the accounts of the company have not been properly prepared by a competent person;

or

(iv) the accounts of the company do not give a true and fair view of the profit or loss or state of affairs of the company;

or

(b) a director of a company has been convicted under subsection (2) of section 375 of an offence in relation to a certificate under subsection (5),

the directors of the company shall within one month after the date of the annual return or the conviction (as the case requires) appoint (unless the company at a general meeting has appointed) a person or persons or a firm as auditor or auditors of the company.

(7) Within one month after a company that by reason of the circumstances referred to in subsection (1) or (2) does not have an auditor ceases to be an exempt proprietary company the directors of the company shall appoint (unless the company at a general meeting has appointed) a person or persons or a firm as auditor or auditors of the company.

(8) A person or firm appointed as auditor of a company under subsection (6) or (7) shall, subject to this Division, hold office until the next annual general meeting of the company and subsection (1) shall not apply to or in relation to that company.

165b. (1) The directors of a company incorporated before the date of commencement of this Part that does not have an auditor, shall within one month after that date of commencement appoint (unless the company in general meeting has appointed) a person or persons or a firm as auditor or auditors of the company.

Obligation to appoint auditor upon company incorporated prior to commencement of new Part.

(2) If a director of a company fails to take all reasonable steps to comply with, or to secure compliance with, subsection (1) he shall be guilty of an offence.

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

(3) A person or firm appointed as auditor of a company under subsection (1) shall, subject to this Part, hold office until the next annual general meeting of the company.

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

Appointment of auditors.

(2) A person or firm appointed as auditor of a company under subsection (1) shall, subject to this Division, hold office until the first annual general meeting of the company.

(3) A company shall—

(a) at its first annual general meeting appoint a person or persons or a firm as auditor or auditors of the company;

and

(b) at each subsequent annual general meeting, if there is a vacancy in the office of auditor of the company appoint a person or persons or a firm to fill the vacancy.

Penalty: One hundred dollars.

(4) An auditor of a company appointed under subsection (3) shall hold office until death or removal or resignation from office in accordance with section 166b or until ceasing to be capable of acting as auditor by reason of subsection (1) or (2) of section 165.

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

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

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

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

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

(10) Where an auditor of a company is removed from office under section 166b and, not less than seven days before the meeting at which he is removed, notice of intention to nominate at that meeting as auditor a specified person or specified persons or specified firm has been given to each member of the company to whom notice of the meeting was sent—

- (a) the company may at the meeting (without adjournment) by a resolution passed by a majority of not less than three-fourths of such members of the company as, being entitled so to do, vote in person or, where proxies are allowed, by proxy, forthwith appoint as auditor a person or persons or a firm specified in the firstmentioned notice and nominated at the meeting;

or

(b) if such a resolution is not passed the meeting may be adjourned to a date not earlier than twenty days and not later than thirty days after the day of the meeting and the company may, at the adjourned meeting, by ordinary resolution, appoint as auditor or auditors a person or persons or a firm, notice of whose nomination for appointment as auditor has been received by the company from a member of the company at least fourteen clear days before the date to which the meeting is adjourned.

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

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

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

(14) A person or firm appointed as auditor of a company under subsection (5), (10), (12) or (13) shall subject to this Division, hold office until the next annual general meeting of the company.

(15) Notwithstanding subsection (4), an auditor of a company that becomes a subsidiary of another company shall, unless he sooner resigns or is sooner removed, retire at the annual general meeting of that subsidiary next held after it becomes such a subsidiary but, subject to this Division, shall be eligible for re-appointment.

(16) If a director of a company fails to take all reasonable steps to comply with or to secure compliance with subsection (1), (5) or (7) he shall be guilty of an offence against this Act and

liable to a penalty not exceeding one hundred dollars and, in the case of an offence against subsection (1) or (5), to a default penalty not exceeding ten dollars.

(17) An auditor appointed by a company before the date of the commencement of this Part and holding office immediately before that date of commencement, shall, subject to section 166b of this Act, hold office until the annual general meeting next held after that date of commencement, but shall be eligible for re-appointment.

Nomination of auditors.

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

(a) before the meeting was called;

or

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

(2) If a company appoints a person or firm as auditor of the company in contravention of subsection (1) the company and every officer of the company who is in default shall be guilty of an offence against this Act.

(3) Where notice of nomination of a person or firm for appointment as auditor of a company is received by the company (whether for appointment at an adjourned meeting referred to in subsection (10) of section 166 or at an annual general meeting), the company shall—

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

or

(b) at the time notice of the meeting is given,

send a copy of the notice of nomination to each person or firm nominated, to each auditor of the company and to each person entitled to receive notice of general meetings of the company.

Removal and resignation of auditors.

166b. (1) 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.

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

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

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

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

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

and

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

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

(7) A statement made by an auditor in an application to the Board under subsection (5) or in answer to an inquiry by the Board relating to the reasons for the application—

(a) is not admissible in evidence in any civil or criminal proceedings against the auditor;

and

(b) may not be made the ground of a prosecution action or suit against the auditor,

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

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

(9) Subject to any order of the Court under subsection (8) and to subsection (10), the resignation of an auditor takes effect—

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

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

or

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

whichever last occurs.

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

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

or

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

whichever is the later.

(11) Where on the retirement or withdrawal from a firm of a member the firm will no longer be capable, by reason of the provisions of paragraph (d) of subsection (2) of section 165 of acting as auditor of a company, the member so retiring or withdrawing shall (if not disqualified from acting as auditor of the company) be deemed to be the auditor of the company until he obtains the consent of the Board to his retirement or withdrawal.

(12) Within fourteen days after the receipt of a notice of resignation of an auditor of a company, or, where an auditor of a company is removed from office, within fourteen days after the removal, the company shall lodge a notice of the resignation or removal in the prescribed form with the Registrar, and in the case of the resignation or removal from office of an auditor of a borrowing corporation, give a copy of the notice lodged with the Registrar to the trustee for the holders of debentures of the borrowing corporation.

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

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

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

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

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

(i) so as to give a true and fair view of the matters required by section 162 (or in the case of a prescribed corporation within the meaning of section 167c, by this Part) to be dealt with in the accounts and if there are group accounts, in the group accounts;

and

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

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

another State or in a Territory of the Commonwealth, in accordance with the provisions of the corresponding law of that State or Territory;

(c) in the case of group accounts—

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

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

(iii) whether he is satisfied that the accounts of the subsidiaries that are to be consolidated with other accounts are in form and content appropriate and proper for the purposes of the preparation of the consolidated accounts and whether he has received satisfactory information and explanations as required by him for that purpose;

and

(iv) whether the auditors' report on the accounts of any subsidiary was made subject to any qualification, or included any comment made under subsection (3), and, if so, particulars of the qualification or comment;

(d) any defect or irregularity in the accounts or group accounts and any matter not set out in the accounts or group accounts without regard to which a true and fair view of the matters dealt with by the accounts or group accounts would not be obtained;

and

(e) if he is not satisfied as to any matter referred to in paragraphs (a), (b) or (c), his reasons for not being so satisfied.

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

- (a) whether he has obtained all the information and explanations that he required;
- (b) whether proper accounting records and other records (including registers) have been kept by the company as required by this Act;
- (c) whether the returns received from branch offices of the company are adequate;
- (d) whether the procedures and methods used by a holding company or a subsidiary in arriving at the amounts taken into any consolidated accounts were appropriate to the circumstances of the consolidation;

and

- (e) where group accounts are prepared otherwise than as one set of consolidated accounts for the group—whether he agrees with the reasons for preparing them in the form in which they are prepared as given by the directors in the accounts,

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

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

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

(6) The auditor's report shall be attached to or endorsed on the accounts or group accounts and shall, if any member so requires, be read before the company in general meeting, and is open to inspection by any member at any reasonable time.

(7) An auditor of a company or his agent authorized by him in writing for the purpose is entitled to attend any general meeting of the company and to receive all notices of, and other communications relating to, any general meeting which a

member is entitled to receive, and to be heard at any general meeting which he attends on any part of the business of the meeting which concerns the auditor in his capacity as auditor.

(8) If an auditor, in the course of the performance of his duties as auditor of a company is satisfied that—

(a) there has been a breach or non-observance of any of the provisions of this Act;

and

(b) the circumstances are such that in his opinion the matter has not been or will not be adequately dealt with by comment in his report on the accounts or group accounts or by bringing the matter to the notice of the directors of the company or, if the company is a subsidiary, of the directors of its holding company,

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

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

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

Special provisions relating to borrowing and guarantor corporations.

167a. (1) The auditor of a borrowing corporation shall, within seven days after furnishing the corporation or its members with any report, certificate or other document that he is required by this Act or by the debentures or trust deed to give to the corporation or its members, send to every trustee for the holders of debentures of the borrowing corporation a copy of the report, certificate or document, together with a copy of each document accompanying the report, certificate or document so furnished.

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

becoming aware of the matter, send a report in writing on the matter to the corporation of which he is auditor and a copy of the report to the trustee.

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

167b. (1) An auditor shall not, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of any statement which he makes in the course of his duties as auditor, whether the statement is made orally or in writing.

Auditors and other persons to enjoy qualified privilege in certain circumstances.

(2) A person shall not, in the absence of malice on his part, be liable to any action for defamation at the suit of any person in respect of the publishing of any document prepared by an auditor in the course of his duties and required by or under this Act to be lodged with the Registrar or required by or under a law in force in another State or in a Territory of the Commonwealth to be lodged with a person who under that law exercises functions similar to those exercised by the Registrar under this Part, whether or not the document has been so lodged.

(3) This section does not limit or affect any other right, privilege or immunity that an auditor, or other person, has as defendant in an action for defamation.

DIVISION IV—SPECIAL PROVISIONS RELATING TO BANKING AND LIFE INSURANCE CORPORATIONS

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

Exemption from accounts provisions.

(a) a banking corporation;

or

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

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

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

(4) Subsection (1) of section 162a does not apply to or in relation to a prescribed corporation or its directors.

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

(a) comply with the provisions of that law;

or

(b) comply with such conditions as are specified by the Registrar,

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

(6) Subsection (2) of section 167 does not apply to or in relation to the accounts of a prescribed corporation that is registered under the law of the Commonwealth relating to life insurance where those accounts comply with that law.

(7) Where a company is a holding company of another corporation and is, under section 162, required to cause group accounts to be made out, the company and the directors and auditors of the company—

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

(i) comply with a law of the Commonwealth relating to the preparation of annual accounts of the prescribed corporation;

or

(ii) in the case of a prescribed corporation registered under a law of the Commonwealth relating to life insurance, comply with such conditions as are specified by the Registrar;

(b) shall not be deemed to have failed to comply with the provisions of subsection (2) of section 162a by reason only that the directors' report referred to therein relates only to corporations in the group of companies other than prescribed corporations;

and

- (c) shall not be deemed to have failed to comply with the provisions of subsection (8) of section 162 or of section 167 by reason only that those provisions are not complied with in relation to prescribed corporations in the group of companies that are registered under a law of the Commonwealth relating to life insurance.

(8) A prescribed corporation shall not be deemed to have failed to comply with section 164 in relation to an annual general meeting by reason only that it does not send to a person entitled to receive notice of general meetings of the company accounts or documents referred to in that section other than accounts and documents so referred to that, in compliance with the provisions of this Part, whether by the operation of this section or otherwise, are to be laid before that annual general meeting.

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

26. Division III and Division IV of Part VI of the principal Act are repealed.

Repeal of
Divisions III
and IV of
Part VI of
principal Act.

27. The following new Parts are enacted and inserted in the principal Act immediately after Part VI thereof:—

Enactment of
Part VIA and
Part VIB of
principal Act—

PART VIA

SPECIAL INVESTIGATIONS

168. (1) In this Part, unless the contrary intention appears—
“affairs” in relation to a company, includes—

Interpretation
and
application.

- (a) the promotion, formation, membership, control, trading, dealings, business and property of the company;
- (b) the ownership of shares in debentures of and interests made available by the company;
- (c) matters concerned with the ascertainment of the persons who are or have been financially interested in the success or failure or apparent

success or failure of the company or are or have been able to control or materially to influence the policy of the company;

and

(d) the circumstances under which a person acquired or disposed of or became entitled to acquire or dispose of shares in debentures of or interests made available by the company:

“company” means a company as defined by subsection (1) of section 5 and includes—

(a) a foreign company registered under Division III of Part XI;

and

(b) where the Governor has appointed an inspector under subsection (2) of section 170 to investigate affairs of a corporation, that corporation:

“inspector” means an inspector appointed under this Part:

“interest” has the same meaning as in section 76:

“officer”, in relation to a company, means an officer as defined by subsection (1) of section 5 and includes—

(a) a person who acts or has at any time acted as banker, solicitor, auditor or in any other capacity for the company;

(b) a person who—

(i) has, or has at any time had, in his possession any property of the company;

(ii) is indebted to the company;

or

(iii) is capable of giving information concerning the affairs of the company;

and

(c) where an inspector has reasonable grounds for suspecting or believing that a person is a person referred to in paragraph (b)—that person.

(2) This Part does not authorize an investigation into affairs of a corporation in relation to business of the corporation that is life insurance business for the purposes of the *Life Insurance Act 1945-1966* of the Commonwealth as amended or re-enacted from time to time.

169. (1) An application for the appointment of an inspector to investigate—

Application for appointment of inspector.

(a) affairs of a company;

or

(b) such of the affairs of a company as are specified in the application,

may be made to the Minister by instrument in writing.

(2) The application may be made—

(a) where the company not being a banking corporation has a share capital—

(i) by not less than one hundred members of the company;

(ii) by members holding not less than one-tenth of the issued shares in the company;

or

(iii) by members holding not less than one-tenth of the paid up capital of the company;

(b) where the company is a banking corporation that has a share capital—by members holding not less than one-third of the issued shares in the company;

(c) where the company does not have a share capital—by not less than one-tenth of the members of the company;

(d) where the company not being a banking corporation has issued debentures—by the trustee for the holders of the debentures or by the holders of not less than one-tenth in nominal value of the debentures;

(e) where the company has made available interests—by the trustee for or representative of the holders of interests or by not less than one-tenth of the holders of the interests;

or

(f) by the company in pursuance of a special resolution.

(3) Where an application is made under this section the applicants shall—

(a) furnish such information in connection with the application as the Governor requires to enable him to determine whether there are reasonable grounds for appointing an inspector:

and

(b) where the Governor so requires give security of such amount and in such manner as he determines for payment of the expenses of and incidental to the investigation.

(4) Where an application is made under this section and the Governor is satisfied that there are reasonable grounds for appointing an inspector and the applicants have complied with the provisions of this section he shall by instrument in writing appoint an inspector to investigate the affairs of the company to which the application relates or if he is of the opinion that an investigation ought not to be made into all those affairs, into such of those affairs as he is satisfied ought to be investigated and specifies in the instrument.

Appointment
of Inspector by
Governor.

170. (1) Where it appears to the Governor that—

(a) it is desirable for the protection of the public or of the members or creditors of a company or of the holders of debentures of a company or of interests made available by a company;

(b) it is in the public interest because fraud or misfeasance or other misconduct by a person who is or has been concerned with affairs of a company is alleged;

or

(c) in any case it is in the public interest,

to appoint an inspector to investigate affairs of a company he may by instrument in writing appoint an inspector.

(2) Where—

(a) under a law of another State or of a territory of the Commonwealth corresponding to this Part a person has been appointed to investigate affairs of a corporation;

and

(b) the Governor is satisfied that in connection with that investigation it is expedient that an investigation be made into affairs of that corporation in the State,

the Governor may by instrument in writing appoint that person an inspector to investigate affairs of the corporation in the State, or if he is of the opinion that an investigation ought not to be made into all those affairs, into such of those affairs as he is satisfied ought to be investigated and specifies in the instrument.

(3) Where under subsection (2) the Governor has appointed a person to investigate affairs of a corporation in the State he may by instrument in writing declare that that person shall have such of the powers of an inspector appointed under subsection (1) in relation to the investigation of the affairs of the corporation subject to such terms and conditions as the Governor specifies in the instrument, as if that corporation were a company within the meaning of this Part and the inspector had been appointed under this section and thereupon the inspector shall have those powers.

171. (1) The Governor shall in the instrument appointing an inspector specify full particulars of the appointment including— Conditions, etc., of appointment of inspector.

- (a) the matters into which the investigation is to be made being all the affairs or particular affairs of a company;
- (b) the period in respect of which the investigation is to be made;
- and
- (c) the terms and conditions of the appointment of the inspector including terms and conditions relating to remuneration.

(2) The Governor may by notice in writing given to an inspector terminate his appointment at any time.

(3) Notice of the appointment and notice of the termination of the appointment of an inspector shall be published in the *Gazette*.

172. Where an inspector thinks it necessary for the purposes of the investigation of affairs of a company to investigate affairs of a corporation which is or has at any relevant time been a related corporation he may with the consent in writing of the Governor investigate affairs of that corporation. Investigation of affairs of related corporation.

173. (1) An inspector may require an officer of a company affairs of which are being investigated under this Part by notice in writing in accordance with the prescribed form given in the prescribed manner— Powers of inspectors.

- (a) to produce to the inspector such books of the company and other books relating to affairs of the company as are in the custody or under the control of the officer;
- (b) to give to the inspector all reasonable assistance in connection with the investigation;
- and
- (c) to appear before the inspector for examination on oath.

(2) An inspector may administer the oath referred to in paragraph (c) of subsection (1).

(3) An inspector shall not exercise his powers under subsection (1) in respect of an officer of a company affairs of which he is investigating under section 172 unless he has furnished to the officer a certificate in accordance with the prescribed form stating that he is investigating affairs of the company under that section and that the officer is an officer of the company.

(4) Where books are produced to an inspector under this Part the inspector may take possession of the books for such period as he considers necessary for the purposes of the investigation and during that period he shall permit a person who would be entitled to inspect any one or more of those books if they were not in the possession of the inspector to inspect at all reasonable times such of those books as that person would be so entitled to inspect.

**Examination
of officers.**

174. (1) Where affairs of a company are being investigated under this Part, an officer of the company shall not—

(a) refuse or fail to comply with a requirement of an inspector under section 173 to the extent to which he is able to comply with it;

(b) in purported compliance with such a requirement knowingly furnish information that is false or misleading in a material particular;

or

(c) when appearing before an inspector for examination in pursuance of such a requirement—

(i) make a statement that is false or misleading in a material particular;

or

(ii) refuse or fail to be sworn.

Penalty: One thousand dollars.

(2) A duly qualified legal practitioner acting for the officer—

(a) may attend the examination;

and

(b) may, to the extent that the inspector permits—

(i) address the inspector;

and

(ii) examine the officer,

in relation to matters in respect of which the inspector has questioned the officer.

(3) The officer is not excused from answering a question put to him by the inspector on the ground that the answer might tend to incriminate him but, where the officer claims before answering the question, that the answer might tend to incriminate him, neither the question nor the answer is admissible in evidence against him in criminal proceedings other than proceedings under subsection (1) or in relation to a charge of perjury in respect of the answer.

(4) A person who complies with the requirement of an inspector under section 173 shall not incur any liability to any person by reason only of that compliance and for the purposes of this subsection a certificate under subsection (3) of section 173 is conclusive evidence of the facts required to be stated in that certificate.

(5) A person required to attend for examination under this Part is entitled to such allowances and expenses as are prescribed.

175. (1) Where an officer of a company fails to comply with a requirement of an inspector appointed to investigate affairs of the company, the inspector may, unless the officer proves that he had a lawful excuse for the failure, certify the failure by writing under his hand to the Court.

Officer failing to comply with requirement of this Part.

(2) Where an inspector gives a certificate under subsection (1) the Court may inquire into the case and—

(a) order the officer to comply with the requirement of the inspector within such period as is fixed by the Court;

or

(b) if the Court is satisfied that the officer failed without lawful excuse to comply with the requirement of the inspector punish him in like manner as if he had been guilty of contempt of the Court and, if it sees fit, also make an order pursuant to paragraph (a) of this subsection.

176. (1) An inspector may cause notes of an examination made by him under this Part to be recorded in writing and be read to or by the person examined and may require that person to sign the notes and, subject to this section, notes signed by that person may be used in evidence in any legal proceedings against that person.

Notes of examination.

(2) A copy of the notes signed by a person shall be furnished without charge to that person upon request made by him in writing.

(3) Notes made under this section that relate to a question the answer to which a person has claimed might tend to incriminate him shall not be used as evidence in criminal proceedings other than proceedings under subsection (1) of section 174 or in relation to a charge of perjury in respect of the answer.

(4) Nothing in this section affects or limits the admissibility of other written evidence or of oral evidence.

(5) The Minister may give a copy of notes made under this section to a duly qualified legal practitioner who satisfies the Minister that he is acting for a person who is conducting or is, in good faith, contemplating legal proceedings in respect of affairs of a company, being affairs investigated by an inspector under this Part.

(6) A duly qualified legal practitioner to whom a copy of notes is given under subsection (5) shall use the notes only in connection with the institution of, and in the course of, legal proceedings and shall not publish or communicate for any other purpose the notes or any part of the contents of them to any person.

Penalty: Two hundred dollars.

(7) Where a report is made under section 178 any notes recorded under this section relating to that report shall be furnished with the report.

177. (1) An inspector may by instrument in writing—

(a) delegate all or any of his powers or functions under this Part except this power of delegation the power to administer oaths and the power to examine on oath;

and

(b) vary or revoke a delegation given by him.

(2) A power or function delegated by an inspector may be exercised or performed by the delegate in accordance with the instrument of delegation as in force from time to time.

(3) A delegate shall on request by an officer of a company affairs of which are being investigated under this Part produce the instrument of delegation for inspection.

(4) A delegation under this section by an inspector of a power or function does not prevent the exercise of the power or the performance of the function by the inspector.

178. (1) An inspector—

Report of
inspector.

(a) may make one or more reports in writing to the Minister during an investigation of affairs of a company and if so directed in writing by the Governor shall make such reports as are specified in the direction;

and

(b) shall, on the completion or termination of the investigation, report in writing to the Governor and to the Minister on the result of the investigation.

(2) A report shall include a statement of the opinion of the inspector in relation to the affairs of the company and the facts on which that opinion is based.

(3) An inspector shall not include in a report any recommendation relating to the institution of criminal proceedings or any statement to the effect that in his opinion a specified person has committed a criminal offence but, where an inspector is of the opinion that criminal proceedings ought to be instituted or that a person has committed a criminal offence, he shall state that opinion in writing given to the Minister.

(4) Subject to subsection (5) a copy of a report made to the Minister under this section shall be given to the company and upon the request in writing of any member of the company who was one of the members upon whose application the inspector was appointed, to that member.

(5) Subject to subsection (6) the Minister shall not give a copy of a report under this Part to a company the subject of the report or a member of the company if he believes that legal proceedings which have been or which in his opinion might be instituted might be prejudiced by the report.

(6) The court before which legal proceedings are brought against a company or other person for or in respect of matters dealt with in a report under this Part may order that a copy of the report be given to that company or person.

(7) The Governor may if he is of the opinion that it is in the public interest so to do cause the whole or any part of a report to be printed and published.

(8) If from a report under this section or from a statement of the opinion of an inspector given under subsection (3) it appears to the Minister that an offence may have been committed

by a person and that a prosecution ought to be instituted the Minister shall cause a prosecution to be instituted and prosecuted.

(9) Where it appears to the Minister that a prosecution ought to be instituted, he may, by notice in writing given before or after the institution of a prosecution in accordance with subsection (8), require an officer of the company affairs of which were investigated (not being an officer who is or, in the opinion of the Minister, is likely to be, a defendant in the proceedings) to give all assistance in connection with the prosecution or proposed prosecution that he is reasonably able to give.

(10) Where a person to whom a notice has been given under subsection (9) fails to comply with a requirement specified in the notice the Court may, on the application of the Minister, direct that person to comply with the requirement.

(11) A person to whom a notice has been given under subsection (9) may object to compliance with any requirement contained in the notice on the ground that he would, in order to satisfy the requirement, be obliged to furnish information tending to incriminate himself of an offence, and where such an objection is in the opinion of the Court, *bona fide*, taken upon that ground, he shall not be directed to comply with that requirement.

(12) If from a report by an inspector made under this section or from a statement of the opinion of an inspector given under subsection (3) it appears to the Minister that proceedings ought in the public interest to be brought by a company, affairs of which were investigated by the inspector, for the recovery of damages in respect of fraud, misfeasance or other misconduct in connection with affairs of the company or for the recovery of property of the company the Minister may institute and conduct proceedings for the recovery of those damages or that property in the name and on behalf of the company.

(13) In any proceedings under subsection (12) of this section, the court may make any order and may pronounce judgment against, or in favour of, the company in all respects as if the proceedings had been instituted and conducted by the company.

(14) The court may, in any such proceedings, make an order for costs against or in favour of the Minister but an order for costs shall not be made against the Minister except where the court is of the opinion that the resources of the company are insufficient to satisfy the order.

(15) The provisions of subsection (14) of this section do not derogate from the generality of the powers exercisable by a court under subsection (13) of this section.

(16) The Minister may recover as a debt due to him from the company any costs (not being costs for which he is indemnified by order of a court under subsection (14) of this section) incurred by him in proceedings under subsection (12) of this section.

(17) The Minister may settle or compromise any proceedings under subsection (12) of this section.

(18) A copy of a report of an inspector purporting to be certified as such a report by the Minister is admissible in legal proceedings as evidence of the inspector's report of his opinion for the purposes of paragraph (g) of subsection (1) of section 222.

179. (1) Subject to this section, the expenses of and incidental to an investigation under this Part (including the expenses incurred and payable by the Minister in any proceedings brought by him in the name of a company) shall be paid out of moneys provided by Parliament.

Expenses of investigation.

(2) The Court may, upon the application of the Minister, order that the whole or any part of those expenses be paid to the Treasurer by a person named in the order.

(3) An order shall not be made under subsection (2) unless the Court is of the opinion that—

(a) the application for the investigation was made in consequence of a wrongful act or omission on the part of the person against whom the order is made;

(b) the circumstances subject to the investigation arose wholly or in part from a wrongful act or omission on the part of the person against whom the order is made;

or

(c) the person against whom the order is made acted vexatiously, or without proper grounds, in making, or joining in, the application for an investigation.

(4) For the purpose of facilitating the enforcement of an order under subsection (2) of this section, the Court may order that any security given for payment of the expenses of and incidental to the investigation by the person against whom the order is made, be forfeited to the Crown.

Concealing,
etc., books of
company.

179a. (1) A person who—

(a) conceals, destroys, mutilates or alters a book of or relating to a company affairs of which are being investigated under this Part;

or

(b) sends, causes to be sent or conspires with another person to send, out of the State such a book or any property belonging to or under the control of the company,

is guilty of an offence against this Act.

Penalty: Five thousand dollars or imprisonment for two years.

(2) In a prosecution for an offence under subsection (1) it is a defence if the person charged with the offence proves that he did not act with intent to defeat the purposes of this Part or to delay or obstruct the carrying out of an investigation under this Part.

Orders may
be made by
Governor.

179b. (1) Where an investigation into affairs of a company is being made under this Part and it appears to the Governor that facts concerning shares in debentures of or interests made available by the company or rights relating to the issue of shares by the company cannot be ascertained because an officer of the company has failed or refused to comply with a requirement of an inspector under section 173, the Governor may by proclamation make one or more of the following orders—

(a) an order restraining a person from disposing of any interest in shares in, debentures of or interests made available by the company or in rights relating to the issue of shares by the company;

(b) an order restraining a person from acquiring shares in, debentures of or interests made available by the company or rights relating to the issue of shares by the company;

(c) an order restraining the exercise of any voting or other rights attached to shares in the company;

(d) an order directing a person who is registered as the holder of shares in respect of which an order under this section is in force to give notice in writing of that order to any person whom he knows to be entitled to exercise a right to vote attached to those shares;

(e) an order directing the company not to make payment, except in the course of winding up, of any sum due from the company in respect of shares in debentures of or interests made available by the company;

(f) an order directing the company not to register the transfer or transmission of shares in or debentures of or interests made available by the company;

(g) an order directing the company not to issue shares to a person who holds shares in the company by reason of his holding shares in the company nor in pursuance of an offer made to such person by reason of his holding shares in the company.

(2) The Governor may by proclamation vary or revoke an order made under subsection (1).

(3) A copy of an order under subsection (1) or (2) shall be served on the company to which it refers.

(4) Where an order made under subsection (1) is in force a person aggrieved by the order may apply to the Court for revocation of the order and the Court may if it is satisfied that it is reasonable to do so revoke the order.

(5) A person shall not contravene or fail to comply with an order under subsection (1).

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

(6) Where an offence against this section is committed by a company the company and every officer of the company who is in default is guilty of an offence against this Act.

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

(7) A prosecution under this section shall not be instituted without the consent in writing of the Minister.

180. (1) Where a report of an investigation under this Part has been made by an inspector in respect of a company or foreign company application may be made to the Court on the petition of the Minister—

Application for winding up.

(a) if the company is incorporated pursuant to this Act or any corresponding previous enactment, for the winding up of the company;

or

(b) if the company is a foreign company, for the winding up of the company so far as its assets in the State are concerned.

(2) Upon the making of the application, the provisions of this Act shall, with such adaptations as are necessary, apply as if—

(a) in the case of a company not being a foreign company—a winding up petition had been presented to the Court by the company;

and

(b) in the case of a foreign company—a petition for an order for the affairs of the company so far as assets in the State are concerned to be wound up in the State had been 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.

(3) Where, in the case of a foreign company, on an application under subsection (1) an order is made for the company so far as its assets in the State are concerned to be wound up within the State, the company shall not carry on business or establish or keep a place of business in the State.

(4) A copy of a petition of the Minister under subsection (1) shall be served on the company to which it refers.

Transitional provision.

180aa. (1) This Part applies to and in relation to an investigation to which Division III or IV of Part VI of this Act as in force immediately before the commencement of the Companies Act Amendment Act, 1971-1972, applied and which had not been completed before that commencement.

(2) An inspector to whom Division III or IV of Part VI of this Act as in force immediately before the commencement of this Part applied shall be deemed to have been appointed under this Part.

(3) Where before the commencement of this Part an act, matter or thing had been done or had arisen in the course of an investigation to which Division III or IV of Part VI of this Act as in force immediately before that commencement applied and which had not been completed, that act, matter or thing shall have the same status, operation and effect in relation to the completion of the investigation after that commencement as if that act, matter or thing had been done or had arisen after that commencement.

(4) In particular and without affecting the generality of subsection (3) an order, application, examination, deposition, writ, summons, proceeding, record, note or report made, effected, issued or given in relation to an investigation to which Division III or IV of Part VI of this Act as in force immediately before the commencement of this Part applied shall have the same status, operation and effect in relation to the completion of the investigation after that commencement as if the order, application, examination, deposition, writ, summons, proceeding, record, note or report had been made, effected, issued or given after that commencement.

PART VIb

TAKE-OVERS

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

(2) Unless the contrary intention appears—

“company” means a company as defined by subsection (1) of section 5 and includes a body corporate incorporated in this State that has a share capital:

“dispatch” includes communicate by any means whatsoever:

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

“invitor” means—

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

or

(b) two or more persons who together dispatch, or propose to dispatch, an invitation, whether they dispatch, or propose to dispatch, the invitation themselves or by an agent:

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

“offeree company” means—

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

(b) in relation to a take-over offer that is constituted by an invitation—a company in relation to shares in which that invitation has been, or is proposed to be, dispatched;

and

(c) in relation to a take-over scheme—a company shares in which are proposed to be acquired under the scheme:

“offeror” means—

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

or

(b) two or more persons who together dispatch, or propose to dispatch, an offer to acquire shares, whether they dispatch, or propose to dispatch, the offer themselves or by an agent,

and includes an invitor:

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

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

“Stock Exchange” means a prescribed Stock Exchange:

“take-over offer” means—

(a) an offer to which subsection (1) of section 180c applies;

or

(b) an invitation to which subsection (3) of section 180c applies:

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

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

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

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

(a) shares in which that person has an interest;

and

(b) shares in which an associate of that person has an interest.

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

(a) a corporation that, by virtue of subsection (5) of section 6, is deemed to be related to that person;

(b) a person in accordance with whose directions, instructions or wishes the first-mentioned person is accustomed or is under an obligation, whether formal or informal, to act in relation to shares in the company referred to in subsection (5);

(c) a person who is accustomed or is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the first-mentioned person in relation to shares in that company;

(d) a body corporate that is, or the directors of which are, accustomed or under an obligation, whether formal or informal to act in accordance with the directions, instructions or wishes of that person in relation to shares in that company;

(e) a body corporate in accordance with the directions, instructions or wishes of which, or of the directors of which, that person is accustomed or under an obligation, whether formal or informal, to act in relation to shares in that company;

or

(f) a person who is associated with the first-mentioned person as provided by subsection (7).

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

(a) if—

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

and

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

or

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

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

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

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

(11) A reference to a person associated with an offeror or an invitor is—

(a) a reference to a corporation that, by virtue of subsection (5) of section 6, is deemed to be related to the offeror or invitor;

(b) in relation to an offer or invitation relating to shares in a company, a reference to a person—

(i) who is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of, or with the authority of, the offeror or invitor;

(ii) who is under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of or with the authority of, a person in accordance with whose directions, instructions or wishes or under whose authority the offeror or invitor is under an obligation, whether formal or informal to act in relation to the offer or invitation;

(iii) who has an agreement, arrangement or undertaking whether formal or informal and whether express or implied with the offeror or invitor by reason of which he or the offeror or invitor may exercise, or directly or indirectly control the exercise of, the voting power attached to a share in the company;

or

(iv) in accordance with whose directions, instructions or wishes, or under whose authority, the offeror or invitor is under an obligation, whether formal or informal to act in relation to the offer or invitation;

or

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

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

Application of Part.

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

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

Take-over offers.

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

(a) the offer is in writing that—

- (i) specifies the number and other particulars of the shares in the company proposed to be acquired during a period specified in the offer;
- (ii) specifies the terms of that offer and of all other offers dispatched, or to be dispatched, in respect of shares referred to in subparagraph (i);
- (iii) specifies the number and other particulars of the shares in the company to which that person, or any of those persons, was entitled immediately before the offer was dispatched;
- (iv) sets out how and by what date the obligations of the offeror are to be satisfied;
- (v) sets out all other particulars of the offer, including terms that this Part requires to be terms;
- (vi) bears a date which is not more than three days before the date on which the offer is dispatched;

and

- (vii) is accompanied by a copy of the statement referred to in subparagraph (i) of paragraph (b) and, if the offeree company has given to the offeror a Part B statement, a copy of that statement;

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

(i) a Part A statement relating to that offer that is signed, where the offeror is a natural person or includes one or more natural persons, by that person or by each of those persons, and where the offeror is or includes one or more corporations, by not less than two directors of the corporation, or by two directors of each of those corporations, authorized so to sign pursuant to a resolution passed at a meeting of the directors, or in the case of a corporation that has only one director, by that director;

and

(ii) in respect of each report referred to in paragraph (e) of clause 2 of Part A of the Tenth Schedule that is set out in the Part A statement referred to in subparagraph (i), a notice in writing signed by the person or persons by whom the report is made to the effect that the person consents, or that each of those persons consents, to the inclusion of the report in the statement in the form and context in which it is included;

and

(c) the offeror has, before the offer is dispatched, lodged with the Registrar a copy of the Part A statement given under paragraph (b).

(2) Subsection (1) does not apply to—

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

(b) an offer to acquire shares in a company (not being an offer that is dispatched at the same time as another offer to acquire shares in the company is dispatched) if—

(i) the offeror has not or, where two or more persons constitute the offeror, none of those persons has;

and

- (ii) no person associated with the offeror has—
dispatched offers to acquire shares in the company, or an invitation or invitations relating to the acquisition of shares in the company, to more than three members of the company within the period of four months immediately preceding the dispatch of the first-mentioned offer;
 - (c) an offer to acquire shares in a company that are not voting shares unless the offeror proposes to acquire—
 - (i) all the shares in the company that are not voting shares;
 - or
 - (ii) all the shares, not being voting shares, included in a class of shares in the company,
other than shares to which the offeror, or, where two or more persons constitute the offeror, any of those persons, is entitled immediately before the offer is dispatched;
 - (d) an offer to acquire shares in a company that does not have more than fifteen members;
 - or
 - (e) an offer to acquire shares in a proprietary company that has more than fifteen members if the members of the company have consented in writing to the provisions of this Part not applying to or with respect to the offer.
- (3) A person, or two or more persons together, shall not dispatch an invitation relating to shares in a company unless—
- (a) the invitation is in writing that—
 - (i) specifies the maximum number and other particulars of the shares in the company proposed to be acquired during a period specified in the invitation;
 - (ii) specifies the terms upon which the shares referred to in subparagraph (i) are proposed to be acquired;
 - (iii) specifies the number and other particulars of the shares in the company to which that person or any of those persons was entitled immediately before the invitation was dispatched;

(iv) bears a date that is not more than three days before the invitation is dispatched;

and

(v) is accompanied by a copy of the statement referred to in subparagraph (i) of paragraph (b) and, if the offeree company has given to the invitor a Part B statement, by a copy of that statement;

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

(i) a Part A statement relating to that invitation that is signed, where the invitor is a natural person or includes one or more natural persons, by that person or by each of those persons and, where the invitor is or includes one or more corporations, by not less than two directors of the corporation, or by two directors of each of those corporations, authorized so to sign pursuant to a resolution passed at a meeting of the directors, or in the case of a corporation that has only one director, by that director;

and

(ii) in respect of each report referred to in paragraph (e) of clause 2 of Part A of the Tenth Schedule that is set out in the Part A statement, a notice in writing signed by the person or persons by whom the report is made to the effect that the person consents or that each of those persons consents to the inclusion of the report in the statement in the form and context in which it is included;

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

(d) the invitor includes in the invitation, or dispatches with the invitation, a statement setting out how and by what date the obligations of the invitor arising from his acceptance of an offer made by an offeree are to be satisfied;

and

(e) the invitor includes in the invitation, or dispatches with the invitation, a statement setting out all other particulars of the invitation, including the matters that have effect under section 180f.

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

(a) an invitor who has dispatched an invitation relating to shares in a company;

(b) a person associated with such an invitor;

or

(c) where two or more persons constitute such an invitor, any of those persons—

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

(5) The person who records the minute of a resolution referred to in subparagraph (i) of paragraph (b) of subsection (1) or (3) of this section shall record in the minute the name of any director who is absent from the meeting when the resolution is passed, the name of any director who votes against the resolution, and the name of any director who is present when the resolution is passed and abstains from voting on the resolution.

(6) In subsections (3) and (4) “invitation” does not include—

(a) an invitation relating to voting shares in a company if the number derived from the formula set out in section 180d, calculated as at the time immediately before the invitation is dispatched, is less than fifteen;

(b) an invitation relating to shares in a company (not being an invitation that is made to more than three people or that is dispatched at the same time as another invitation relating to shares in the company is dispatched) if—

(i) the invitor has not or where two or more persons constitute the invitor, none of those persons has;

and

- (ii) no person associated with the invitor has—
 dispatched offers to acquire shares in the company or an invitation or invitations relating to the acquisition of shares in the company to more than three members of the company within the period of four months immediately preceding the dispatch of the first-mentioned invitation;
- (c) an invitation relating to shares in a company that are not voting shares unless the invitor proposes to acquire—
- (i) all the shares in the company that are not voting shares;
- or
- (ii) all the shares, not being voting shares, included in a class of shares in the company, other than shares to which the invitor or, where two or more persons constitute the invitor, any of those persons, is entitled immediately before the invitation is dispatched;
- or
- (d) an invitation relating to shares in the company that does not have more than fifteen members.

(7) In this section, “offer” does not include an offer made at an official meeting of a Stock Exchange in the ordinary course of trading on the Stock Exchange.

(8) For the purposes of this section—

- (a) an invitation relating to the acquisition of shares in a company that is dispatched otherwise than to a person or persons named in the invitation shall be deemed to be dispatched to more than three members of the company;

and

- (b) an offer or invitation that is dispatched within three days before or within three days after another offer or invitation is dispatched shall be deemed to be dispatched at the same time as that other offer or invitation.

180d. (1) For the purposes of section 180c, the formula is
 the formula $\frac{100(A + B)}{C}$, where—

Formula for
 calculating
 voting power.

- (a) A is a number equal to the maximum number of votes that might be exercised at a general meeting of the company in respect of the voting shares in the company to which the offeror is entitled, or where two or more persons constitute the offeror, the aggregate of the number of—
- (i) voting shares in the company to which each of those persons is entitled;
- and
- (ii) if one or more of those persons is entitled to voting shares in the company with another person—those shares;
- (b) B is a number equal to the maximum number of votes that might be exercised at a general meeting of the company in respect of—
- (i) the voting shares in the company, not being voting shares referred to in paragraph (a), in respect of which the offeror or a person associated with the offeror (or, where two or more persons constitute the offeror, any of those persons) has, during the preceding period of four months dispatched offers (being offers that have not been withdrawn) or proposes to dispatch offers during the ensuing period of four months;
- and
- (ii) voting shares in the company, not being voting shares referred to in subparagraph (i), that the offeror or a person associated with the offeror (or, where two or more persons constitute the offeror, any of those persons) might acquire for valuable consideration (otherwise than in the ordinary course of trading at an official meeting of a Stock Exchange) as the result of an invitation or invitations made by any of those persons during the preceding period of four months or as the result of an invitation or invitations proposed to be made by any of those persons during the ensuing period of four months;
- and
- (c) C is a number equal to the maximum number of votes that might be exercised at a general meeting of the company in respect of all the voting shares in the company.

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

(a) that a person referred to in that paragraph has a right to acquire;

or

(b) an interest in which a person so referred to has a right to acquire,

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

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

(4) For the purposes of this section, voting shares shall be deemed to be held by such person or persons and in such manner as would enable the greatest number of votes to be exercised at a general meeting of the company in respect of them.

180e. (1) The following subsections have effect in respect of a take-over offer that is constituted by an offer.

Terms and conditions of take-over offers.

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

(3) The take-over offer shall not be conditional upon the offeree approving or consenting to a payment or other benefit being made or given to a director of the offeree company, or of a corporation that is deemed by virtue of subsection (5) of section 6 to be related to the offeree company, as compensation for loss of office or as consideration for or in connection with his retirement from office.

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

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

Terms and conditions of invitations.

180f. (1) The following subsections have effect in respect of a take-over offer that is constituted by an invitation.

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

(3) The invitor shall not indicate or imply, whether by statement in the invitation or in any other manner, that an offer made by an offeree will not be accepted by the invitor unless the offeree approves or consents to a payment or other benefit being made or given to a director of the offeree company, or of a corporation that is deemed by virtue of subsection (5) of section 6 to be related to the offeree company, as compensation for loss of office or as consideration for or in connection with his retirement from office.

(4) The invitor shall not—

(a) indicate or imply, whether by statement in the invitation or in any other manner, that the order in which offers made by offerees are dispatched or received may have an effect in relation to the determination of the offers that will be accepted;

(b) accept an offer to dispose of shares made in consequence of the invitation before the expiration of the period during which the invitation is expressed, under subsection (2), to remain open;

or

(c) accept an offer or offers made in consequence of the invitation in such a manner as to be unfair to persons who so made offers.

(5) If the invitor accepts an offer for the reason only that it was received before another offer, he shall, unless he satisfies the Court that he had reasonable grounds for doing so, be deemed for the purposes of paragraph (c) of subsection (4), to have accepted that offer in such a manner as to be unfair to other persons who made offers in consequence of the invitation.

Statement by offeree company.

180g. (1) Where an offeree company receives a Part A statement given under section 180c, the company shall—

(a) not later than fourteen days after receipt of the statement, give to the offeror;

or

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

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

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

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

(a) a copy of the statement;

and

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

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

**Notice to
offeree
company.**

(a) on the day on which the take-over offer is dispatched, give notice in writing to the offeree company that the offer has been dispatched and of the date that it bears;

and

(b) on the same day or, if the office of the Registrar is not open on that day, on the next day on which that office is open, lodge with the Registrar a copy of the notice.

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

180j. (1) Where—

(a) there is, in a Part A statement given under section 180c, matter that is false in a material particular or materially misleading in the form and context in which it appears;

or

(b) there is an omission of material matter from such a statement,

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

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

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

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

(3) The persons to whom this section applies are—

(a) the offeror;

(b) where the offeror is or includes a corporation, a person who was a director of that corporation at the time the statement was given, not being—

(i) a director who was not present at the meeting at which the resolution authorizing the signing of the statement was agreed to;

(ii) a director who voted against that resolution;
or

(iii) a director who abstains from voting on the resolution;

and

(c) subject to subsection (4), a person a notice of whose consent to the inclusion in the statement of a report made by him has been given to the offeree company under paragraph (b) of subsection (1) or under paragraph (b) of subsection (3), of section 180c.

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

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

(a) that, when the statement was given, he—

(i) believed on reasonable grounds that the false matter was true;

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

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

or

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

and

(b) that—

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

or

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

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

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

and

(b) that—

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

or

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

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

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

Acceptance of
take-over
offers by
third parties.

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

(a) a corresponding take-over offer shall be deemed to have been made to that other person in respect of those shares;

and

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

Variation of
take-over
offers.

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

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

(a) where a cash sum is so offered—by increasing the amount of that sum;

(b) where shares are so offered—by increasing the number of those shares;

(c) where stock is so offered—by increasing the amount of that stock;

(d) where debentures are so offered—by increasing the rate of interest payable under those debentures;

(e) where debentures are so offered—by increasing the amount of those debentures;

(f) where an option to acquire unissued shares is so offered—by varying the option by increasing the number of unissued shares that may be acquired under that option.

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

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

(5) Where an offeror varies a take-over offer, he shall forthwith give to the offeree company, to the offeree and to each other offeree to whom a like take-over offer within the meaning of subsection (4) has been made a notice in writing in accordance with subsection (6) and shall forthwith lodge with the Registrar a copy of the notice.

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

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

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

- (a) the offeror;
- (b) where the offeror is or includes a corporation, a corporation that, by virtue of subsection (5) of section 6 is deemed to be related to the firstmentioned corporation;
- (c) a person who has an agreement, arrangement or undertaking whether formal or informal and whether express or implied with the offeror by reason of which he or the offeror may exercise, or directly or indirectly control the exercise of, the voting power attached to a share in the company to which the take-over scheme relates;

or

- (d) a person in accordance with whose directions, instructions or wishes, or under whose authority, the offeror is under an obligation whether formal or informal to act in relation to the take-over scheme,

shall not, except in pursuance of a variation made in accordance with section 180l, give, offer to give or agree to give to a person whose shares may be acquired under the take-over scheme any benefit (whether by payment of cash or otherwise) not provided for in the particulars of the take-over scheme as set out in the Part A statement given in respect of the take-over scheme under section 180c.

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

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

Declaration
where take-
over offers are
conditional.

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

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

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

and

(b) specifying—

(i) the proportion that the number of shares to which, to his knowledge, he is entitled at the time of lodging the notice for publication bears to the number of issued shares in the company;

or

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

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

(a) stating whether the offeror has declared the offers to be free from the condition;

or

(b) stating whether, to his knowledge, the condition was, at the time of lodging the notice for publication, fulfilled or not.

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

(a) the proportion that the number of shares to which, to his knowledge, he is entitled at the time of lodging the notice for publication bears to the number of issued shares in the company;

or

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

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

(6) Where by subsection (2) or (3) an offeror is required to cause a notice to be published and, due to circumstances beyond the control of the offeror, the notice is not published in accordance with the subsection, the subsection shall be deemed to have been complied with if the offeror—

(a) did all things that would, but for those circumstances, have resulted in publication of the notice in accordance with the subsection;

and

(b) causes the notice to be published on the first practicable date after those circumstances cease to exist.

(7) On the first day on which a notice referred to in subsection (2) or (3) is lodged for publication, the offeror shall send, by telegraph, a message to the effect of the notice to each Stock Exchange on the official list of which shares in the offeree company are listed for quotation.

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

180p. Notwithstanding anything in the articles of a company, or in the document by which a company is constituted, the directors of the company are entitled to have refunded to them by the company any expenses reasonably incurred by them in the interest of the members of the company in relation to a take-over scheme involving the acquisition of shares in the company.

Expenses of
directors of
offeree
company.

Statements as
to proposed
take-over
offers.

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

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

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

(a) that he will be able to perform his obligations if the offer is accepted;

or

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

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

(a) that they will be able to perform their obligations if the offer is accepted;

or

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

Orders to
protect rights
under take-
over schemes.

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

- (a) an order restraining the registration of transfers of shares in the offeree company;
 - (b) an order restraining the disposal of any interest in shares in the offeree company;
 - (c) an order cancelling a contract, arrangement or offer relating to the take-over scheme;
 - (d) an order declaring a contract, arrangement or offer relating to the take-over scheme to be voidable;
- and
- (e) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act.

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

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

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

Court may excuse non-compliance due to inadvertence, etc.

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

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

Powers of Court.

(2) The Court may before making an order under section 180r or 180s, direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

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

180u. (1) The regulations may vary 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 Part to the requirements of a part of the Tenth Schedule shall be read as a reference to those requirements as so varied for the time being.

Regulations may be made with respect to certain matters.

(2) The regulations may require the lodging, as prescribed, with one or more Stock Exchanges, or with the Registrar, or with both, of—

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

Power to exempt from compliance with Part.

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

Offences.

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

(2) If a take-over offer or an invitation is dispatched in contravention of this Part, the offeror, or, where the offeror is two or more persons, each of those persons, is guilty of an offence against this Act.

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

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

(5) Subsection (1) of section 379 does not apply in relation to this Part.

Acquisition of shares of shareholders dissenting from a take-over scheme.

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

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

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

and

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

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

(3) Where—

(a) take-over offers in respect of shares included in the class of shares referred to in paragraph (a) of subsection (1) representing not less than nine-tenths of the nominal amount of shares subject to acquisition have been accepted;

and

(b) if the shares subject to acquisition represent less than nine-tenths of the nominal amount of all the shares included in that class—take-over offers in respect of those shares have been accepted by not less than three-quarters of the offerees,

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

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

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

(6) Subsection (5) does not have effect where, on an application made by the dissenting offeree—

(a) within one month after the date on which the notice was given;

or

(b) within fourteen days after a statement is supplied to the dissenting offeree under subsection (9),

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

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

(a) within one month after the date on which the notice was given under subsection (3);

or

(b) within fourteen days after the giving to him of a statement under subsection (9),

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

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

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

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

(a) the expiration of one month after the notice was given;

(b) the expiration of fourteen days after the last day on which a statement under subsection (9) was given;

or

(c) where an application has been made to the Court by the dissenting offeree—the application has been disposed of,

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

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

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

(13) Where money or other property is held in trust by a company for a person under this section and has been so held for not less than two years, the company shall, before the expiration of ten years after the date on which the money or other property was received by the company, pay the money or transfer the property and any accretions (or, if any property has been substituted for the whole or any part of that sum or property—that property) to the Treasurer of the State.

(14) The Treasurer of the State shall sell or dispose of any property other than money so received and any property that becomes substituted for the whole or any part of that property as he thinks fit and shall deal with the proceeds of the sale or disposal and any money so received and any income derived from that property as if they were moneys paid to him under the Unclaimed Moneys Act, 1891-1962.

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

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

or

- (c) to discharge any other liability,

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

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

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

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

**Rights of
remaining
shareholder**

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

and

- (b) any other shares included in that class to which the offeror, or, where two or more persons constitute the offeror, any of those persons, was entitled before the take-over offers were dispatched,

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

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

(3) A holder of remaining shares referred to in subsection (2) may, within three months after the giving of notice to him under that subsection, require the offeror to acquire shares included in that class of which he is the holder and, where alternative terms were offered in respect of shares included in that class in take-over offers under the take-over scheme, elect which of those terms he will accept.

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

- (a) on the terms on which shares were acquired under the take-over scheme and, where alternative terms were offered to the holders of those shares, on the terms for which the shareholder has elected or where he has not so elected for whichever of the terms the offeror determines;

or

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

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

Transitional provision.

180z. (1) Notwithstanding the enactment of the Companies Act Amendment Act, 1971-1972, this Act as in force before the commencement of that Act shall continue to operate in relation to a take-over scheme in respect of which a notice had been given under paragraph (a) of subsection (2) of section 184 of this Act, as then in force, as if that Act had not been enacted.

(2) Subject to subsection (1) of this section, this Act, as amended by the Companies Act Amendment Act, 1971-1972, shall operate in respect of every take-over scheme

180za. Where before the commencement of the Companies Act Amendment Act, 1971-1972, the directors of a company have reasonably incurred expenses in the interest of the members of the company in relation to a take-over scheme as defined by section 184 of the Act as in force before that date, being a take-over scheme involving the acquisition of shares in the company, the directors of the company are entitled, and shall be deemed to have been at all times entitled, to have the expenses refunded to them by the company. **Expenses.**

28. Section 184 of the principal Act is repealed.

Repeal of s. 184 of principal Act.

29. Section 185 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Repeal of s. 185 of principal Act and enactment of s. 185 in its place—

185. (1) Where a scheme or contract (not being a take-over scheme as referred to in subsection (4) of section 180a) involving a transfer of the shares included in a class of shares in a company (in this section referred to as “the transferor company”) to a person (in this section referred to as “the transferee”) has, within four months after the making of the offer in that behalf by the transferee been approved by the holders of not less than nine-tenths in nominal value of the shares included in that class of shares (other than shares already held at the date of the offer by or by a nominee for the transferee or, where the transferee is a company, its subsidiary), the transferee may at any time within two months after the offer has been so approved give notice as prescribed to a dissenting shareholder that he desires to acquire the shares of that shareholder and, when such a notice is given, the transferee is, unless on an application made by a dissenting shareholder within one month after the date on which the notice was given or within fourteen days after a statement is supplied to a dissenting shareholder in pursuance of subsection (5) (whichever is the later), the Court thinks fit to order otherwise, entitled and bound, subject to this section, to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee.

Acquisition of shares of shareholders dissenting from scheme or contract approved by majority.

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

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

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

(a) the transferee offers the same terms to all holders of the shares (other than those already held as mentioned in subsection (1)) the transfer of which is involved;

and

(b) the holders who approve the scheme or contract, besides holding not less than nine-tenths in nominal value of the shares (other than those already held as mentioned in subsection (1)) the transfer of which is involved, are not less than three-fourths in number of the holders of those shares.

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

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

(a) the transferee shall, within one month after the date on which he becomes beneficially entitled to those shares (unless in relation to the scheme or contract he has already complied with this requirement), give notice of the fact as prescribed to the holders of the remaining shares included in that class who, when the notice was given, had not assented to the scheme or contract or been given notice by the transferee under subsection (1);

and

(b) such a holder may, within three months after the giving of the notice to him, require the transferee to acquire his shares and, where alternative terms were offered to the approving shareholders, elect which of those terms he will accept,

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

(c) on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to him and, where alternative terms were offered to those shareholders, on the terms for which the shareholder has elected, or where he has not so elected, for whichever of the terms the transferee determines;

or

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

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

(a) the expiration of one month after the date on which the notice is given;

(b) the expiration of fourteen days after a statement under subsection (5) is supplied;

or

(c) where an application has been made to the Court by a dissenting shareholder, the application is disposed of,

whichever last happens, transmit a copy of the notice to the transferor company together with an instrument of transfer executed, on behalf of the shareholder, by a person appointed by the transferee and, on its own behalf, by the transferee, and

pay, allot or transfer to the transferor company the consideration representing the price payable by the transferee for the shares that, by virtue of this section, the transferee is entitled to acquire and the transferor company shall thereupon register the transferee as the holder of those shares.

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

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

(10) The Treasurer of the State shall sell or dispose of any property other than cash transferred to him under this section or any corresponding previous enactment and any property that becomes substituted for it that he comes to hold in right of any property other than cash received under subsection (9) in such manner as he thinks fit and shall deal with the proceeds of the sale or disposal and any cash so received and any dividends paid to him in respect of shares in a corporation as if they were moneys paid to him under the Unclaimed Moneys Act, 1891-1962.

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

(a) to pay any calls;

(b) to make any contribution to the debts and liabilities of the corporation;

or

(c) to discharge any other liability,

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

(12) Where, under the law of another State or of a Territory of the Commonwealth that corresponds to this section, shares in a company are transferred to an authority specified in that law, that authority is not subject to any obligation as specified in subsection (11), and is not liable to be sued as so specified, in respect of those shares, but this subsection does not affect a right of the company to forfeit a share.

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

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

30. Section 196 of the principal Act is amended—

**Amendment of
principal Act
s. 196—**

(a) by striking out from subsection (1) the passage "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" and inserting in lieu thereof the passage "any debt or amount which in a winding up is payable in priority to other unsecured debts pursuant to paragraph (b) or (d) of subsection (1), subsection (3) or subsection (5) of section 292";

**Payment of
certain debts
out of assets
subject to
floating charge
in priority to
claims under
charge.**

(b) by striking out subsection (2) and inserting in lieu thereof the following subsection:—

(2) For the purposes of this section—

(a) "floating charge" includes a floating charge within the meaning of section 292;

and

(b) the periods of time mentioned in section 292 shall be reckoned from the date of the appointment of the receiver or of possession being taken, as the case may be;

and

(c) by inserting after subsection (3) the following subsection:—

(4) This section binds the Crown.

Repeal of
Part IX of
principal Act
and enactment
of Part IX
in its place—

31. Part IX of the principal Act (including the headings thereto) is repealed and the following new Part is enacted and inserted in its place:—

PART IX

OFFICIAL MANAGEMENT

Interpretations.

198. (1) In this Part—

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

“special notice”, in relation to a meeting of creditors of a company, means notice of the meeting posted to each of the creditors not less than fourteen days nor more than twenty-one days before the date of the meeting.

(2) For the purposes of any special resolution required under this Part to be passed at a meeting of creditors of a company no corporation that is deemed by virtue of subsection (5) of section 6 to be related to the company shall be entitled to vote on such resolution.

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

Transitional
provision.

198a. (1) Where at the commencement of the Companies Act Amendment Act, 1971-1972, a company is under official management, the company shall, subject to the provisions of this Act, continue under official management—

(a) for a period of two years from the date on which it was placed under official management;

or

(b) for a period of six months from the date of commencement of the Companies Act Amendment Act, 1971-1972,

whichever period later expires, unless the period of official management is sooner terminated or is extended under section 203c of the principal Act as amended by the Companies Act Amendment Act, 1971-1972.

(2) For the purposes of subsection (1) of this section the date on which a company is placed under official management shall be the date on which a meeting of creditors of the company called for the purpose of placing the company under official management and appointing an official manager passed a special resolution under section 201 of this Act as in force immediately before the date of commencement of the Companies Act Amendment Act, 1971-1972, determining that the company shall be under the sole management of an official manager.

(3) Where before the date of commencement of the Companies Act Amendment Act, 1971-1972, a meeting of creditors of a company has been called for the purpose of placing the company under official management and appointing an official manager, and before that date a special resolution under section 201 of this Act as in force immediately before that date determining that the company shall be under the sole management of an official manager has not been passed by the creditors of the company, the meeting shall be deemed not to have been duly called.

(4) The purported appointment of a person to a committee of management under this Part as in force immediately before the commencement of the Companies Act Amendment Act, 1971-1972, shall be and shall be deemed always to have been a valid and effective appointment if the appointment would be a valid and effective appointment under this Act as amended by that Act.

(5) All persons, things and circumstances appointed or created by or under Part IX of this Act as in force immediately before the commencement of the Companies Act Amendment Act, 1971-1972, or existing or continuing under that Part immediately before that commencement shall under and subject to this Act as amended by the Companies Act Amendment Act, 1971-1972, continue to have the same status, operation and effect as they respectively would have had if the Companies Act Amendment Act, 1971-1972, had not been passed.

(6) Except where otherwise expressly provided the provisions of this Part shall apply to and in relation to a company placed under official management before or after the re-enactment of that Part.

Power of
company to
call meeting
of creditors
to appoint
Official
Manager.

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

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

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

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

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

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

(6) A director of a company shall not furnish a certificate concerning a statement of the affairs of a company for the purpose of subsection (4) of this section unless he has made such inquiries as are reasonably necessary to determine whether the statement does or does not give a true and fair view of the state of affairs of the company as at the date to which it is made up.

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

(8) A company or a director who fails to comply with, or a director who fails to take all reasonable steps to secure compliance by the company with, any provision of subsections (3), (4), (5) and (6) of this section, shall be guilty of an offence against this Act.

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

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

(a) posted to each of the creditors;
and

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

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

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

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

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

and

(c) a copy of the certificate furnished by each director of the company in accordance with subsection (4) of this section.

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

Penalty: Four hundred dollars. Default penalty.

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

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

(14) The chairman of the meeting shall be appointed by a resolution of the creditors of the company present at the meeting who are entitled to vote on a special resolution under section 198 and the chairman so appointed shall at the meeting determine whether the time and place of the meeting are convenient to the majority in value of the creditors and his decision shall be final; but if the chairman decides that the time and place of the meeting are not convenient to that majority, the meeting shall lapse.

(15) Within seven days after the first notice calling the meeting is posted to any creditor, the company shall lodge with the Registrar a copy of that notice and shall attach thereto a certified copy of the statement of affairs of the company required to be prepared by the company under subsection (3) of this section and certified copies of the certificates furnished by the directors under subsection (4) of this section.

Statement of
affairs of
company to be
submitted to
meeting.

200. (1) At the meeting of creditors of the company called under section 199 the directors of the company shall submit to the meeting the statement of affairs of the company required to be prepared by the company under subsection (3) of section 199.

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

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

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

Penalty: Four hundred dollars.

201. (1) A meeting called under section 199 may by resolution be adjourned from time to time to a time and date specified in the resolution but shall not be adjourned to a date later than thirty days after the date for which the meeting was called.

Power to adjourn meeting.

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

(3) Where a meeting is adjourned to a date later than eight days after the passing of the resolution by which it is so adjourned the company shall cause notice of the time and place of the resumption thereof to be published at least once in a daily newspaper circulating generally throughout the State at least seven days before the date of that resumption.

202. (1) Where at a meeting of creditors of a company called under section 199 the creditors have passed a resolution to the effect that in their opinion the company is unable to pay its debts as and when they become due and payable but that if the company were placed under official management there would in their opinion be a reasonable probability that it would be able to pay its debts, the creditors may at the meeting by special resolution—

Power of creditors to place company under official management.

(a) determine that the company shall be placed under official management for such period commencing on the date of the passing of the resolution and not exceeding two years from that date, as is specified in the resolution;

(b) appoint a person named in the resolution who—

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

(ii) is not the auditor of the company;

and

(iii) has furnished to the company a certificate under his own hand that he is neither an undischarged bankrupt nor a person who has made any arrangement or composition with his creditors generally and has not been released from his indebtedness,

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

and

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

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

- (a) cause a notice in the prescribed form of the passing of the resolutions to be lodged with the Registrar;
- (b) cause notice that the company has been placed under official management and of the full name of the official manager to be published in a daily newspaper circulating generally throughout the State;

and

(c) send by post to each of the creditors and members of the company a notice in the prescribed form of—

(i) the special resolution;

and

(ii) the right to apply to the Court under section 211.

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

Penalty: One hundred dollars. Default penalty.

(4) Any creditor to whom the company owes, or any representative of a group of creditors to whom the company owes collectively, more than ten per centum of the total unsecured debts of the company, may within fourteen days of the appointment of a person as official manager of the company under subsection (1) of this section or subsection (3) of section 204 apply to the Court for the termination of that appointment and if in the opinion of the Court the person so appointed is not suitable for the position the Court may make an order terminating his appointment and appointing as official manager a registered company auditor (other than the auditor of the company) who has consented in writing to act as official manager.

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

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

- (a) within seven days after the making of the order lodge with the Registrar notice in the prescribed form of the making of the order and its date;

and

- (b) within seven days of the passing and entering of the order lodge with the Registrar an office copy of the order.

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

Penalty: One hundred dollars. Default penalty.

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

Appointment
of committee
of manage-
ment.

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

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

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

- (i) a creditor of the company;
- (ii) the attorney of a creditor of the company by virtue of a general power of attorney given by the creditor;

or

- (iii) a person authorized in writing by a creditor of the company to be a member of the committee of management;

or

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

- (i) a member of the company;
- (ii) the attorney of a member of the company by virtue of a general power of attorney given by the member;

or

- (iii) a person authorized in writing by a member of the company to be a member of the committee of management.

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

Notice of
appointment
and address
of official
manager.

the event of any change in the situation of his office, shall, within fourteen days after the change, lodge with the Registrar notice thereof in the prescribed form.

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

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

Penalty: One hundred dollars. Default penalty.

Effect of
resolution.

203. (1) Where a special resolution placing a company under official management has been duly passed by the creditors of the company under subsection (1) of section 202—

(a) the company shall be under official management for the period specified in the special resolution unless the official management is extended or earlier terminated under this Part;

(b) the directors of the company shall cease to hold office;

(c) the person appointed official manager of the company shall assume and be responsible for the management of the company and shall perform all of the duties and may perform any of the functions and exercise any of the powers of the directors of the company;

and

(d) the affairs of the company shall be conducted subject to the provisions of this Part.

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

Six-monthly
meetings of
creditors and
members.

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

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

and

(b) call a meeting of the creditors and members of the company to consider the statement and report so prepared.

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

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

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

(5) Copies of the statements and report referred to in this section shall be kept by the official manager of the company and shall be open to the inspection of any creditor or member of the company at the registered office of the company.

(6) The official manager shall—

(a) give written notice that the statement referred to in subsection (1) of this section has been made up to every creditor and member of the company when next forwarding any report, notice of meeting, notice of call or dividend relating to the company;

and

(b) in the notice inform creditors and members of the company at what address and between what hours the statement may be inspected.

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

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

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

(10) An official manager who fails to comply with any provision of this section and any auditor of a company who fails to supply to the official manager at his request the statement that the auditor is required to provide under subsection (3) of this section shall be guilty of an offence against this Act.

Penalty: One hundred dollars. Default penalty.

**Stay of
proceedings.**

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

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

(3) At any time after a company has, in accordance with section 199, called a meeting of its creditors for the purpose of placing the company under official management, and before the passing of a special resolution by the creditors under subsection (1) of section 202 determining that the company be placed under official management, the company or any creditor thereof may, if any action or proceeding against the company is pending, apply to the Court to stay or restrain further proceedings in the action or proceedings, and the Court may stay or restrain the proceedings accordingly on such terms and conditions as it thinks fit.

**Power to
extend period
of official
management.**

203c. (1) Whenever the period of official management of a company is due to expire, the official manager shall call a meeting of creditors of the company to be held on a date not

earlier than three months and not later than one month before the date on which the period is due to expire to consider and, if thought fit, pass a special resolution extending the official management for such further period, not exceeding twelve months, as is specified in the resolution.

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

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

(a) posting to each of the creditors a notice stating the place, date, time and purpose of the meeting;

and

(b) publishing a copy of the notice at least once in a daily newspaper circulating generally throughout the State,

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

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

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

Termination
of appointment
of official
manager.

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

(i) the committee of management appointed pursuant to this Part;

or

(ii) a meeting of creditors of the company;

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

or

(c) by an order of the Court.

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

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

(b) the official manager is 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;

or

(c) having been appointed official manager by an order of the Court under subsection (4) of section 202 he ceases to be a registered company auditor.

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

(4) The provisions of paragraph (c) of subsection (1) of section 203 shall apply to a person appointed official manager under subsection (3) of this section.

Appointment of official manager not to affect appointment and duties of auditor.

205. 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 re-appointment of auditors and the rights and duties of auditors shall continue to apply to and in relation to the company, and in the application of those provisions to and in relation to the company any reference therein to the directors of a company shall be read as a reference to the official manager of the company.

Duties of official manager.

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

(a) as soon as may be after his appointment as such take into his custody or under his control all the property and things in action to which the company is or appears to be entitled;

(b) subject to any direction given pursuant to paragraph (c) of this subsection conduct the business and management of the company in such manner as he may think most economical and most beneficial to the interests of the members and creditors of the company;

(c) comply with any directions of the creditors of the company that are agreed to by special resolution at any meeting of creditors of which the creditors of the company have been given special notice;

- (d) comply with all requirements of this Act applicable to the company or the directors of the company relating to the keeping of accounts and the lodging of annual returns and perform all such other duties as are so applicable and are imposed on a company or on the directors of a company by or under this Act;
- (e) if so directed by the committee of management of the company acting under subsection (4) of section 214 or by a creditor or creditors of the company to whom the company owes not less than twenty per centum in value of the total unsecured debts of the company, by notice posted to each of the creditors, call a meeting of creditors of the company;
- (f) if a meeting of creditors held under subsection (1) of section 203c does not resolve to extend the period of the official management, within seven days of such failure to extend the period, by notice posted to each of the members of the company, call a meeting of the members to be held on a date not later than twenty-one days after the meeting of creditors under subsection (1) of section 203c for the purpose of—
 - (i) reporting to the members accordingly;
 - and
 - (ii) enabling the members if they think fit to elect directors of the company to take office upon the termination of the period of official management.

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

(3) If at any time the official manager is of the opinion that the continuance of the official management of the company will not enable the company to pay its debts he shall call a meeting of the members of the company for the purpose of considering and, if thought fit, passing a special resolution that the company be wound up voluntarily.

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

- (a) call a meeting of the creditors of the company for the day, or the day next following the day on which the meeting of members is proposed to be held;

(b) cause the notice of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the members;

(c) call the meeting of creditors for a time and place convenient to the majority in value of the creditors and give the creditors at least seven clear days' notice by post of the meeting;

and

(d) cause notice of the meeting of the creditors to be advertised at least seven days before the date of the meeting in the *Gazette* and in a daily newspaper circulating generally throughout the State.

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

(6) Where a meeting of members called under subsection (3) of this section has passed a special resolution to the effect that the company be wound up voluntarily the company shall, and the creditors may, at their respective meetings called under subsections (3) and (4) of this section, nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons the person nominated by the creditors shall be liquidator, but if no person is nominated by the creditors the person nominated by the company shall be liquidator.

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

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

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

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

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

207. (1) Any transfer, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company which, had it been made or done by or against an individual, would in his bankruptcy be void or voidable shall, in the event of the company being placed under official management, be void or voidable in like manner.

Undue preferences in case of official management.

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

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

Application and disposal of assets during official management.

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

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

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

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

(a) firstly, in payment of the costs of the official management including his remuneration the remuneration

of the deputy official manager (if any) and that of an auditor (if any) appointed in accordance with the provisions of Division III of Part VI;

(b) secondly, in payment of the liabilities of the company incurred in the course of the official management;

and

(c) thirdly, in payment of any other liabilities of the company.

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

Official manager may apply to Court for directions.

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

Application of certain provisions in winding up to official management.

209. Where a company is under official management, the provisions of paragraph (g) of subsection (1) of section 218 and of sections 248, 249, 306, 374c and 374d shall apply as if the company under official management were a company being wound up and the official manager were the liquidator and any reference in those sections to contributories shall be read as a reference to members.

Power of Court to terminate official management and give directions.

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

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

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

211. (1) Notwithstanding that a resolution has been passed under subsection (1) of section 202 determining that a company shall be placed under official management, and notwithstanding anything contained in subsection (1) of section 203—

Resolution to place company under official management effective, subject to appeal.

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

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

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

(3) Upon cancellation of the resolution by the Court under subsection (1) of this section, the company shall cease to be under official management and the person appointed official manager of the company shall cease to be the official manager and upon any variation of the resolution by the Court under this section, the resolution shall have effect as so varied; but notwithstanding that the resolution may be so varied or cancelled by the Court, the acts of an official manager prior to any such variation or cancellation shall be valid and binding on the company and on the members and creditors thereof.

Lodgement of
office copy
of Court
order.

211a. (1) Where the Court makes an order under section 210 or section 211 the person obtaining the order shall within seven days after the order is made lodge with the Registrar notice in the prescribed form of the making of the order and the date thereof.

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

(3) Where the Court makes an order under section 210 or section 211 terminating the official management of a company the person obtaining the order shall within seven days after the passing and entering of the order publish a copy of the order at least once in a daily newspaper circulating generally throughout the State.

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

Penalty: One hundred dollars. Default penalty.

Release of
official
manager.

212. (1) Where a person ceases to be official manager of a company he shall notwithstanding that he has ceased to be official manager, within fourteen days thereafter, prepare a report showing how the official management was conducted by him and for this purpose shall have a right of access to the records and books of the company.

(2) A person shall within twenty-eight days after ceasing to be official manager call a meeting of the creditors of the company.

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

(a) posting to each of the creditors a notice and a copy of the report referred to in subsection (1) of this section;

and

(b) publishing a copy of the notice at least once in a daily newspaper circulating generally throughout the State,

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

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

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

Penalty: One hundred dollars. Default penalty.

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

(7) Subject to subsection (8) of this section where a person ceases to be the official manager of a company, the adoption by the meeting of creditors of the company of the report prepared by him under subsection (1) of this section and of his explanations shall discharge him from all liability in respect of any act or omission by him in the management of the company or otherwise in relation to his conduct as official manager.

(8) The adoption of the report referred to in subsection (1) of this section and the explanations thereof shall not so discharge the person who was official manager if such adoption was obtained by fraud or by suppression or concealment of any material fact nor discharge him from any liability that by virtue of any enactment or rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company.

(8a) Within seven days after the passing of a resolution adopting the report referred to in subsection (1) of this section, the person who was the official manager shall cause a notice in the prescribed form of the passing of the resolution to be lodged with the Registrar.

Penalty: One hundred dollars. Default penalty.

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

(10) The Court may grant or refuse the application and may direct that court costs incurred by the person who was official manager in connection with his application for release following his ceasing to be official manager shall be part of the costs of the

official management and deemed to have been incurred during the period of the official management, and the order, if granted, shall have effect as if the statement, reports and explanations had been adopted by a meeting of creditors of the company.

(11) Where the Court makes an order under subsection (10) of this section, the person who was the official manager shall lodge with the Registrar an office copy of the order within seven days after the passing and entering of the order.

Penalty: One hundred dollars: Default penalty.

Documents of company under official management to state that fact.

213. (1) Where a company is under official management, every invoice, order for goods or business letter issued by or on behalf of the company or the official manager thereof, being a document on or in which the name of the company appears, shall have the words "Under Official Management" immediately following the name of the company where it first appears therein.

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

Penalty: One hundred dollars.

Functions of committee of management and appointment of deputy official manager.

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

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

(a) may appoint a person who—

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

(ii) is not the auditor of the company;

and

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

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

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

(c) may determine the amount of the salary or the remuneration of the deputy official manager.

(3) A person who is appointed deputy official manager of a company shall within fourteen days after his appointment lodge with the Registrar a notice in the prescribed form of his appointment as deputy official manager and of the situation of his office; and in the event of any change in the situation of his office, shall within fourteen days thereof, lodge with the Registrar notice thereof in the prescribed form.

Penalty: One hundred dollars. Default penalty.

(3a) A person who ceases to be deputy official manager shall within fourteen days after he so ceases to be deputy official manager, lodge with the Registrar notice thereof in the prescribed form.

Penalty: One hundred dollars. Default penalty.

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

(5) Subject to this section and to the regulations, the provisions of subsections (2) to (9), both inclusive, of section 242 shall apply to and with respect to a committee of management and the proceedings of and vacancies in a committee of management and to and with respect to the removal of members thereof any reference in those provisions to the committee of inspection being read as a reference to the committee of management, any reference therein to the liquidator being read as a reference to the official manager, and any reference therein to a contributory being read as a reference to a member of the company.

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

Accidental omission to give notice.

32. Section 218 of the principal Act is amended—

(a) by striking out from paragraph (a) of subsection (1) the passage "A past" and inserting in lieu thereof the passage "Subject to paragraph (aa), a past";

Amendment of principal Act, s. 218—
Liability as contributories of present and past members.

(b) by inserting after paragraph (a) of subsection (1) the following paragraph:—

(aa) where the company is a limited company and became a limited company by virtue of a change of status in pursuance of paragraph (a) of subsection (1) of section 25, a past member of the company who was a member thereof at the time of the change of status shall, notwithstanding paragraph (a)—

(i) if the winding up commences within the period of three years commencing with the change of status—be liable to contribute in respect of debts and liabilities contracted before the change of status;

and

(ii) if no persons who were members of the company at the time of the change of status are members at the commencement of the winding up within that period—be liable so to contribute notwithstanding that the existing members have satisfied the contribution required to be made by them in pursuance of this section;

(c) by inserting after paragraph (e) of subsection (1) the following paragraphs:—

(ea) notwithstanding paragraphs (d) and (e), where the company is a limited company and became a limited company by virtue of a change of status in pursuance of paragraph (a) of subsection (1) of section 25, the amount that a member of the company at the time of the change of status, or a person who at that time was a past member of the company, is liable to contribute in respect of the debts and liabilities of the company contracted before that time is unlimited;

(eb) where a company changes its status in pursuance of paragraph (d) of subsection (1) of section 25, a person who, at the time the company applied to the Registrar for the change of status was a past member of the company and did not thereafter again become a member of the company shall not, if the company is wound up,

be liable to contribute to the assets of the company more than he would have been liable to contribute thereto had the company not changed its status.

33. Section 221 of the principal Act is amended by striking out from paragraph (e) of subsection (1) the passage "section 175" and inserting in lieu thereof the passage "section 180".

Amendment of principal Act, s. 221—
Application for winding up.

34. Section 222 of the principal Act is amended by striking out from paragraph (g) of subsection (1) the passage "section 169 or section 170 or section 173" and inserting in lieu thereof the passage "Part VIA".

Amendment of principal Act, s. 222—
Winding up by Court.

35. Section 292 of the principal Act is amended—

Amendment of principal Act, s. 292—
Priorities.

(a) by striking out from paragraph (b) of subsection (1) the passage "One thousand dollars" and inserting in lieu thereof the passage "one thousand five hundred dollars";

(b) by striking out from paragraph (b) of subsection (1) the passage "within a period of six months before the commencement of the winding up" and inserting in lieu thereof the passage "before the relevant date";

(c) by striking out from paragraph (c) of subsection (1) the passage "the commencement of the winding up" and inserting in lieu thereof the passage "the relevant date";

(d) by striking out paragraph (d) of subsection (1) and inserting in lieu thereof the following paragraph:—

(d) fourthly, all amounts due or accruing due on or before the relevant date to or in respect of an employee of the company (whether remunerated by way of salary, wages, commission or otherwise) by virtue of—

(i) a contract of employment;

or

(ii) a law of the Commonwealth or a State or Territory of the Commonwealth,

relating to long service leave, extended leave, annual leave, recreation leave, or sick leave;

(e) by striking out from paragraph (e) of subsection (1) the passage "date of the commencement of the winding up" wherever it occurs in that paragraph and inserting in lieu thereof, in each case, the passage "relevant date";

(f) by striking out from subsection (3) the passage “wages salary annual leave or long service leave” and inserting in lieu thereof the passage—

(i) a contract of employment;

or

(ii) a law of the Commonwealth or of a State or Territory of the Commonwealth,

relating to long service leave, extended leave, annual leave, recreation leave or sick leave;

(g) by inserting after subsection (9) the following subsection:—

(10) In this section—

“floating charge” includes a charge conferring a floating security at the time of its creation which has become a fixed or specific charge:

“relevant date” means—

(i) in the case of a company ordered to be wound up by the Court which has not previously commenced to be wound up voluntarily—the date of the winding-up order;

and

(ii) in any other case—the date of the commencement of the winding-up.

Amendment of
principal Act,
s. 293—
Undue
preference.

36. Section 293 of the principal Act is amended by striking out subsection (2) and inserting in lieu thereof the following subsection:—

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

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

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

(ii) where on the presentation of the petition for the winding up the company is under official management or has been under official management at any time within six

months prior to the presentation of the petition, the date of the commencement of the official management;

or

(iii) in any other case, the date of presentation of the petition for the winding-up,

whichever is the earliest;

and

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

(i) where on the date of the passing of the resolution that the company be wound up voluntarily, the company is under official management or had been under official management at any time within six months prior to the passing of that resolution, the date of the commencement of the official management;

or

(ii) in any other case, the date on which the resolution to wind up the company voluntarily is passed.

37. Sections 300 to 305 (inclusive) of the principal Act are repealed.

Repeal of ss. 300 to 305 of principal Act.

38. Section 331 of the principal Act is amended by inserting after the present contents thereof (which are hereby designated subsection (1) thereof) the following subsection:—

Amendment to principal Act, s. 331—
Distribution of surplus where cessation of business within twelve months.

(2) In subsection (1) of this section “no-liability company” includes a company that having been incorporated as a no-liability company changes its status under section 25.

39. Section 332 of the principal Act is amended by inserting after the present contents thereof (which are hereby designated subsection (1) thereof) the following subsection:—

Amendment to principal Act, s. 332—
As to rights attaching to preference shares issued to promoters.

(2) In subsection (1) of this section “no-liability company” includes a company that having been incorporated as a no-liability company changes its status under section 25.

40. Section 341 of the principal Act is amended by striking out from subsection (1) the passage “paragraph (h) of clause 2” and inserting in lieu thereof the passage “paragraphs (d), (e) and (f) of subclause (4) of clause 5”.

Amendment of principal Act, s. 341—
Balance-sheets and accounts.

Amendment of principal Act, s. 349—
Suspension of fee where foreign company opens share registry but does not carry on business.

41. Section 349 of the principal Act is amended by inserting after subsection (3) the following subsection:—

(4) Where the Minister is satisfied that a company has become liable to pay a fee under subsection (1) of this section by reason of the fact that the company has failed to comply with subsection (2) of this section, the Minister may, if he considers it just to do so, remit that fee wholly or partly.

Amendment of principal Act, s. 350—
Obligation to state name of foreign company.

42. Section 350 of the principal Act is amended by inserting after the present contents thereof (which are hereby designated subsection (1) thereof) the following subsections:—

(2) If a foreign company incorporated under the law of any other State or Territory of the Commonwealth is placed under official management in its place of incorporation by any law or enactment corresponding to Part IX of this Act or is being wound up every invoice, order for goods or business letter issued by or on behalf of the company, or an official manager or liquidator of the company or a receiver or manager of the property of the company being a document on or in which the name of the company appears shall have the words “under official management”, or “in liquidation” (whichever is appropriate) added after the name of the company where it first appears therein.

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

Penalty: Forty dollars.

Enactment of section 352a of principal Act—

43. The following section is enacted and inserted in the principal Act immediately after section 352 thereof:—

Cesser of business in the State.

352a. If a foreign company incorporated under the law of any other State or Territory of the Commonwealth is placed under official management in its place of incorporation by any law or enactment corresponding to Part IX of this Act or if such period of official management is terminated the company shall, within one month after such commencement or termination or within such further time as the Registrar in special circumstances allows, lodge or cause to be lodged with the Registrar notice in the prescribed form of that fact.

Amendment of principal Act, s. 366—
Irregularities in proceedings.

44. Section 366 of the principal Act is amended—

(a) by striking out from subsection (3) the word “thereof” where it first occurs;

and

(b) by inserting after the word “directors” first and secondly occurring the passage “of the company or of the creditors of the company or at a joint meeting of the creditors and members of the company”.

45. Section 367 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Repeal of s. 367 of principal Act and enactment of section in its place—

367. Neither an inspector within the meaning of Part VIA nor a person authorized by him pursuant to section 177 shall require disclosure by a duly qualified legal practitioner of any privileged communication, whether oral or written, made to or by him in that capacity, except as respects the name and address of his client.

Privileged communication.

46. The following sections are enacted and inserted in the principal Act immediately after section 367 thereof as enacted by this Act:—

Enactment of ss. 367a, 367b and 367c of principal Act—

367a. (1) Where it appears to the Attorney-General that any officer or former officer of a company to which this section applies has conducted himself in such a way that the officer or former officer has rendered himself liable to action by the company in relation to the performance of his duties as an officer of the company the Attorney-General, or any person who is authorized in that behalf by the Attorney-General, may apply *ex parte* to the Court for an order that the officer or former officer shall attend before the Court on a day to be appointed by the Court to be examined as to his conduct and dealings as an officer of the company.

Power to examine defaulting officers.

(2) Any examination under this section shall not be held in open Court unless the Court otherwise orders.

(3) The Court on making the order under subsection (1) or at any subsequent time on the application of any person concerned may give such directions as to the matters to be inquired into and as to the procedure to be followed in relation to the examination as it thinks fit.

(4) The applicant and with the leave of the Court, any creditor or member of the company may take part in the examination either personally or by a solicitor or counsel.

(5) The person examined shall be examined on oath and shall answer all questions which the Court puts or allows to be put to him and shall not be entitled to refuse to answer any question which is relevant or material to the examination on the ground that his answer might tend to incriminate him; but if he claims that the answer to any question might incriminate him and but for this subsection he would have been entitled to refuse to answer the question the answer shall not be used in any

subsequent criminal proceedings against him except in the case of a charge against him for perjury committed by him in answer to that question.

(6) A person ordered to be examined under this section may be represented by a solicitor with or without counsel who shall be at liberty to put to him questions for the purpose of enabling him to explain or qualify any answer given by him.

(7) Notes of the examination—

(a) shall be reduced to writing;

(b) shall be read over to or by and signed by the person examined;

(c) may thereafter, subject to subsection (5) of this section, be used in evidence in any legal proceedings against the person examined;

and

(d) may be inspected and copied by the person examined the Attorney-General the Registrar or applicant or with the consent of the Court by any creditor or member of the company.

(8) The Court may, if it thinks fit, adjourn the examination from time to time.

(9) Where the Court is satisfied that an order for an examination under this section was obtained without reasonable cause it may order the whole or any part of the costs incurred by the person ordered to be examined to be paid by the applicant or by any other person who with the consent of the Court takes part in the examination.

**Power of
Court to assess
damages
against
delinquent
officers.**

367b. (1) Where it appears to the Attorney-General that any person who has taken part in the formation, promotion, administration, management or winding-up of a company to which this section applies has misapplied or retained or become liable or accountable for any money or property of the company or has been guilty of any misfeasance or breach of trust in relation to the company the Attorney-General or any person who is authorized in that behalf by the Attorney-General may apply to the Court to examine into the conduct of that person and for an order that that person do repay or restore the money or property or such part thereof as the Court thinks fit together with interest at such rate as the Court thinks just or to pay to the company such sum by way of damages in respect of the misapplication, retainer, misfeasance or breach of trust as the Court thinks just.

(2) This section shall extend and apply to the receipt of any money or property by any officer or former officer of the company whether by way of salary or otherwise which appears to the Court to have been unfair or unjust to the company or its members.

(3) The provisions of this section apply notwithstanding that the person concerned may be criminally liable in respect of the matters in respect of which the order is sought.

367c. (1) In sections 367a and 367b “company to which this section applies” means a company— Interpretation.

- (a) which is in course of being wound up;
- (b) which is under official management;
- (c) in respect of which there is an inspector within the meaning of Part VIA;
- (d) in respect of which a receiver or manager has been appointed whether by the Court or pursuant to the powers contained in any instrument;
- (e) which has ceased to carry on business or is unable to pay its debts.

(2) For the purposes of the last preceding subsection a company shall be deemed—

- (a) to have ceased to carry on business if the Registrar has—
 - (i) sent to the company by post a letter pursuant to the provisions of subsection (1) of section 308 and has not received an answer within one month of the date of the letter to the effect that the company is carrying on business;
 - or
 - (ii) published in the *Gazette* a notice pursuant to the provisions of subsection (3) of section 308;

and

- (b) to be unable to pay its debts if execution or other process issued on a judgment decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part.

47. Section 374 of the principal Act is amended by striking out subparagraph (i) of paragraph (b) of subsection (14) of that section.

Amendment of principal Act, s. 374—
Restriction upon offering shares, etc., for subscription or purchase.

Enactment of
ss. 374a to
374g of
principal Act—

48. The following sections are enacted and inserted in the principal Act immediately after section 374 thereof:—

Offences by
officers of
certain
companies.

374a. (1) Every person who, being a past or present officer of a company to which this section applies—

(a) does not to the best of his knowledge and belief fully and truly discover to the appropriate officer all the property real and personal of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary course of the business of the company;

(b) does not deliver up to the appropriate officer, 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 five years next before the relevant day or at any time on or after that day—

(i) has concealed any part of the property of the company to the value of one hundred dollars or upwards, or has concealed any debt due to or from the company;

(ii) has fraudulently removed any part of the property of the company to the value of one hundred dollars or upwards;

(iii) has concealed, destroyed, mutilated or falsified, or has been privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to the property or affairs of the company;

(iv) has made or has been privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company;

(v) has fraudulently parted with altered or made any omission in, or has been privy to fraudulent parting with altering or making

any omission in, any document affecting or relating to the property or affairs of the company;

- (vi) by any false representation or other fraud, has obtained any property for or on behalf of the company on credit which the company has not subsequently paid for;
- (vii) has obtained on credit, for or on behalf of the company, under the false pretence that the company is carrying on its business, any property which the company has not subsequently paid for;

or

- (viii) has pawned, pledged or disposed of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing was in the ordinary course of the business of the company;

- (d) wilfully makes any material omission in any statement relating to the affairs of the company;
- (e) knowing or believing that a false debt has been proved by any person fails for a period of one month to inform the appropriate officer of his knowledge or belief;
- (f) prevents the production of any book or paper affecting or relating to the property or affairs of the company;
- (g) within five years next before the relevant day or at any time on or after that day has attempted to account for any part of the property of the company by making entries in the books of the company showing fictitious transactions losses or expenses;

or

- (h) within five years next before the relevant day or at any time on or after that day has been guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding-up,

shall be guilty of an offence against this Act.

Penalty: Imprisonment for two years or five thousand dollars.

(2) It shall be a good defence to a charge under paragraphs (a), (b) or (d) or subparagraphs (i), (vii) or (viii) of paragraph (c) of subsection (1) if the accused proves that he had no intent to defraud, and to a charge under paragraph (f) or subparagraphs (iii) or (iv) of paragraph (c) of subsection (1) if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(3) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under subparagraph (viii) of paragraph (c) of subsection (1) 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 one year or two thousand five hundred dollars.

**Liability
where proper
accounts not
kept.**

374b. Where the provisions of section 161a have not been complied with in respect of a company to which this section applies throughout the period of two years immediately preceding the relevant day or the period between the incorporation of the company and the relevant day, whichever is the shorter, every officer who is in default 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 thousand five hundred dollars.

Offences.

374c. (1) If an officer of a company to which this section applies was knowingly a party to the contracting of a debt by the company and had, at the time the debt was contracted no reasonable or probable grounds of expectation after taking into consideration the other liabilities, if any, of the company at the time, of the company being able to pay the debt the officer shall be guilty of an offence against this Act.

Penalty: Imprisonment for three months or five hundred dollars.

(2) If any business of a company to which this section applies has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose any person who was knowingly a party to the carrying on of the business in that manner shall be guilty of an offence against this Act.

Penalty: Imprisonment for one year or two thousand five hundred dollars.

374d. (1) Where a person has been convicted of an offence Powers of Court. under subsection (1) or subsection (2) of section 374c the Court on the application of the appropriate officer or, with the consent of the Attorney-General, any creditor or contributory of the company may if it thinks proper to do so declare that the person shall be personally responsible without any limitation of liability—

(a) in the case of a conviction under subsection (1) of section 374c for the payment to the company of an amount equal to the whole or such part of the debt as the Court thinks fit in respect of which the conviction was made;

and

(b) in the case of a conviction under subsection (2) of section 374c for the payment to the company of the amount required to satisfy all or any of the debts of the company as the Court directs.

(2) Where the Court makes any declaration under subsection (1) in relation to a person it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may order that the liability of the person under the declaration is a charge on any debt or obligation due from the company to him, or on any charge or any interest in any charge on any assets of the company held by or vested in him or any corporation or person on his behalf, or any person claiming as assignee from or through the person liable or any corporation or person acting on his behalf, and may from time to time make such further order as is necessary for the purpose of enforcing any charge imposed under this subsection.

(3) For the purpose of subsection (2) of this section “assignee” includes any person to whom or in whose favour by the directions of the person liable the debt, obligation, or charge was created issued or transferred or the interest created, but does not include an assignee for valuable consideration, not including consideration by way of marriage, given in good faith and without notice of any of the matters upon which the conviction or declaration was made.

(4) The provisions of this section shall have effect notwithstanding that the person concerned is criminally liable in respect of the matters on the ground of which the declaration is made.

(5) On the hearing of an application under subsection (1) of this section the appropriate officer may himself give evidence or call witnesses.

Interpretations.

374e. (1) In sections 374a to 374d (both inclusive)—

“appropriate officer” means—

- (a) in relation to a company which is being wound up, the liquidator;
- (b) in relation to a company which is under official management, the official manager;
- (c) in relation to a company in respect of which there is an inspector within the meaning of Part VIA, the person nominated as the appropriate officer in the particular case by the Attorney-General;
- (d) in relation to a company in respect of which a receiver or manager of all or any of the property of the company has been appointed whether by the Court or pursuant to the powers contained in any instrument, the receiver or manager;

and

- (e) in relation to any company which has ceased to carry on business or is unable to pay its debts, the Registrar:

“company to which this section applies” means a company—

- (a) which is in course of being wound up;
- (b) which is under official management;
- (c) in respect of which there is an inspector within the meaning of Part VIA;
- (d) in respect of which a receiver or manager has been appointed whether by the Court or pursuant to the powers contained in any instrument;
- (e) which has ceased to carry on business or is unable to pay its debts:

“the relevant day” means—

- (a) in relation to a company which is being wound up, the day upon which under the provisions of this Act the winding-up is or is deemed to have commenced;

- (b) in relation to a company which is under official management, the day upon which it is determined that the company shall be placed under official management;
 - (c) in relation to a company in respect of which there is an inspector within the meaning of Part VIA the day upon which the inspector was appointed;
 - (d) in relation to a company in respect of which a receiver or manager has been appointed, the day upon which the receiver or manager was appointed;
 - (e) in relation to a company which is unable to pay its debts the day upon which the execution or other process was returned unsatisfied in whole or in part;
- and
- (f) in relation to any company which has ceased to carry on business, the day upon which the last return was lodged by the company pursuant to the requirements of sections 158 or 159, as the case requires.

(2) For the purposes of the last preceding subsection a company shall be deemed—

- (a) to have ceased to carry on business if the Registrar has—
 - (i) sent to the company by post a letter pursuant to the provisions of subsection (1) of section 308 and has not received an answer within one month of the date of the letter to the effect that the company is carrying on business;
- or
- (ii) published in the *Gazette* a notice pursuant to the provisions of subsection (3) of section 308;

and

- (b) shall be deemed to be unable to pay its debts if execution or other process issued on a judgment decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part.

**Inducement
to be appointed
liquidator or
official
manager.**

374f. (1) Any person who gives or agrees or offers to give to any member or creditor of a company any valuable consideration with a view of securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator or official manager shall be guilty of an offence against this Act.

Penalty: Five hundred dollars.

**Penalty for
falsification
of books.**

(2) Every officer or contributory of any company who destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register 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 or five thousand dollars.

**Frauds by
officers.**

374g. Every person who while an officer of a company—

- (a) has by false pretences or by means of any other fraud induced any person to give credit to the company;
- (b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company;

or

- (c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against the company,

shall be guilty of an offence against this Act.

Penalty: Imprisonment for two years or five thousand dollars.

**Court may
disqualify
person from
acting as
director, etc.,
in certain
circumstances.**

374h. (1) Unless cause to the contrary is shown the Court may on an application by the Registrar and on being satisfied as to the matters referred to in subsection (2), make an order prohibiting a person specified in the order from acting as a director of or from being concerned in the management of a company during such period not exceeding five years after the date of the order as is specified in the order.

(2) The Court shall not make an order under subsection (1) unless it is satisfied—

- (a) that the person to whom the application for an order relates was given notice of the application;

(b) that within the period of seven years before notice of the application was given to the person referred to in paragraph (a), whether that period commenced before or after the commencement of the Companies Act Amendment Act, 1971-1972, that person was a director of or was concerned in the management of two or more companies to which this section applies;

and

(c) that in the case of each company referred to in paragraph (b) the manner in which the affairs of the company had been managed was wholly or partly responsible for the company being wound up, under official management, ceasing to carry on business, being unable to satisfy a levy of execution, being subject to the appointment of a receiver or manager or entering into a compromise or scheme of arrangement with its creditors.

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

Penalty: One thousand dollars or imprisonment for six months.

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

(5) In this section "company to which this section applies" means a company—

(a) that has been wound up or is in the course of being wound up because of the inability to pay its debts as and when they became due;

(b) that has been or is under official management;

(c) that has ceased to carry on business because it was unable to pay its debts as and when they became due;

(d) in respect of which a levy of execution was not satisfied;

(e) in respect of the property of which a receiver or manager has been appointed whether by the Court or pursuant to the powers contained in an instrument;

or

(f) that has entered into a compromise or scheme of arrangement with its creditors.

Amendment of
principal Act,
s. 375—
False and
misleading
statements.

49. Section 375 of the principal Act is amended by striking out subsection (2) and inserting in lieu thereof the following subsections:—

(2) A person who, in a return, report or certificate or in accounts or in any other document required by or for the purposes of this Act, wilfully makes or authorizes the making of a statement which is false or misleading in a material particular knowing it to be false or misleading or wilfully omits or authorizes the omission of any matter or thing without which the document is misleading in a material respect and is known by him to be misleading shall be guilty of an offence against this Act.

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

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

Enactment of
s. 375a of
principal Act—

50. The following section is enacted and inserted in the principal Act immediately after section 375 thereof:—

False reports.

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

- (a) a director, auditor, member, debenture holder or trustee for debenture holders of the corporation;
- (b) in the case of a corporation that is a subsidiary, an auditor of the holding company;
- or
- (c) a prescribed Stock Exchange in Australia or elsewhere or an officer thereof,

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

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

Enactment of
s. 378a of
principal Act—

51. The following section is enacted and inserted in the principal Act immediately after section 378 thereof:—

Reciprocation
in relation to
offences under
corresponding
laws.

378a. (1) If, in the State, a person does an act, or omits to do an act, and that person would, if he had done that act, or had omitted to do that act, in another State or in a Territory of

the Commonwealth, have been guilty of an offence against the law of that State or Territory that corresponds to this Act, that person is guilty of an offence against this Act punishable as the first-mentioned offence is punishable.

(2) Where an act or omission constitutes an offence both under this Act and under the law of another State or of a Territory of the Commonwealth and the offender has been punished for the offence under that law, he is not liable to be punished in respect of the offence under this Act.

52. Section 383 of the principal Act is amended by striking out from subsection (2) the passage “and sections 45 to 49 (both inclusive)” and inserting in lieu thereof the passage “, sections 45 to 49 (both inclusive) and section 374”.

Amendment of principal Act, s. 383—
Application of Act.

53. The Second Schedule to the principal Act is amended—

Amendment of second schedule of principal Act.

(a) by striking out from items 29a and 29b the passage “section 161a” and by inserting in lieu thereof the passage “section 161b”;

and

(b) by inserting after item 29b the following item:—

29c. On lodging an application to the Registrar under section 162c. 25.00

54. The Eighth Schedule to the principal Act is amended—

Amendment of eighth schedule of principal Act.

(a) by inserting immediately after paragraph 10 the following paragraph:—

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

(b) by inserting in Part II after the passage “The date of the annual general meeting of the company was 19 .” the following passage:—

were
The accounts of the company ——— laid before the
were not*
annual general meeting of the company.;

(c) by inserting in Part II after the passage “The address of the place at which the register of members is kept if other than the registered office is .” the following passage:—

*Strike out whichever is inapplicable.;

- (d) by striking out from Part II the heading "*Copy of last audited Balance-sheet and Profit and Loss Account of the Company*" and the passage appearing beneath that heading and inserting in lieu thereof the following:—

Copy of last Accounts of the Company

The return must include a copy of all accounts and group accounts (if any) laid before the company at the annual general meeting together with a copy of every document required by law to be attached or annexed thereto unless, during the whole of the period covered by the accounts—

- (a) the company was an exempt proprietary company and an unlimited company,
or
(b) the company was an exempt proprietary company and the accounts and group accounts (if any) of the company laid before that meeting had been audited in accordance with this Act.;

- (e) by striking out paragraph (e) appearing under the heading "*Certificate*" and inserting in lieu thereof the following paragraph:—

(e)(5) that to the best of our knowledge and belief the company was an exempt proprietary company within the meaning of section 5 of the Companies Act, 1962, as amended, during the whole of the period covered by the accounts and section 165ab did not apply to the company;;

- (f) by striking out paragraph (h) appearing under the heading "*Certificate*" and inserting in lieu thereof the following paragraph:—

(h)(8) that all the members agreed pursuant to section 165a of the Companies Act, 1962, as amended, not to appoint an auditor at the annual general meeting;;

- (g) by inserting after paragraph (h) appearing under the heading "*Certificate*" the following paragraph:—

(i)(8a) that all the members agreed pursuant to section 165ab of the Companies Act, 1962, as amended, not to appoint an auditor at the annual general meeting.;

(h) by striking out from Part II the item:—

(6) Strike out if not appropriate.

and

(i) by striking out from Part II the item:—

(8) Strike out this paragraph if inapplicable. Note this paragraph is only applicable to an exempt proprietary company.

and inserting in lieu thereof the following items:—

(8) Strike out this paragraph if inapplicable. Note this paragraph is only applicable to an exempt proprietary company that is an unlimited company no member of which was, at the date of the annual general meeting, a person other than a natural person or an exempt proprietary company that is an unlimited company, or a corporation that, under the law of another State or of a Territory of the Commonwealth, is an exempt proprietary company that is an unlimited company where all the members agreed not more than one month before that meeting not to appoint an auditor.

(8a) Strike out this paragraph if inapplicable. Note this paragraph is only applicable to an exempt proprietary company that is not an unlimited company, all the members of which agreed not more than one month before the annual general meeting not to appoint an auditor.

55. The Ninth Schedule to the principal Act is repealed (including the headings thereto) and the following schedule is enacted and inserted in its place:—

Repeal of
ninth schedule
of principal
Act and
enactment of
new schedule
in its place.

NINTH SCHEDULE

ACCOUNTS AND GROUP ACCOUNTS

1. (1) In this Schedule—

(a) “reserve” does not include any amount written off or retained by way of providing for depreciation, renewal or diminution in value of assets or retained by way of providing for any known liability, or any amount set aside for the purpose of its being used to counter the effect of undue fluctuations in charges for taxation.

(b) a reference to a financial year in relation to group accounts of a holding company is—where the financial year of any one or more of the companies in the group of companies does not end on the date on which the financial year of the holding company ends—a reference to the financial year of the holding company and the financial year of each other company in the group of companies that does not end on that date.

(2) The term “reserve” shall not be included in any accounts or group accounts to describe any amount which is excluded by the provisions of subclause (1) of this clause from the meaning of that term for the purposes of this Schedule.

2. (1) There shall be shown separately in the accounts or group accounts (whether by way of note or otherwise), in addition to any other matters necessary to present a true and fair view of the profit or loss of the company or of the company and its subsidiaries—

(a) the amounts of income received, or due and receivable, as dividends declared on shares in—

(i) related corporations;

and

(ii) other corporations,

separate amounts being shown in respect of each subsidiary;

- (b) the amounts of income received, or due and receivable, as interest on debentures, deposits, loans or advances, from—
- (i) the holding company;
 - (ii) subsidiaries;
- and
- (iii) other related corporations;
- (c) the amount of—
- (i) any profit arising from the sale of assets (other than current assets);
- and
- (ii) any profit arising from the revaluation of assets (other than current assets),
- and in respect of each such profit a statement whether it has been brought into account in determining the net amount of the profit or loss of the company or of the company and its subsidiaries;
- (d) the amount of any other profit arising otherwise than in the ordinary course of business;
- (e) the amounts of interest paid, or due and payable, on debentures, deposits, loans or advances, or otherwise, to—
- (i) the holding company;
 - (ii) subsidiaries;
 - (iii) other related corporations;
- and
- (iv) other persons;
- (f) the amount of—
- (i) any loss arising from the sale of assets (other than current assets);
- and
- (ii) any loss arising from the revaluation of assets (other than current assets),
- and in respect of each such loss a statement whether it has been brought into account in determining the net amount of the profit or loss of the company or of the company and its subsidiaries;
- (g) the amount of any other loss arising otherwise than in the ordinary course of business;
- (h) the amount charged for, or set aside to a provision for, depreciation, diminution in value or amortization of—
- (i) fixed assets;
 - (ii) investments;
- and
- (iii) intangible assets;
- (i) the amount charged for, or set aside for, the renewal or replacement of fixed assets;
- (j) in respect of each class of debtors' accounts shown separately in the accounts or group accounts—
- (i) the amount of bad debts written off in the profit and loss account;
- and
- (ii) the amount of bad debts written off against any provision, reserve or other account, stating the name of the provision, reserve or account and the amount written off against it;
- (k) in respect of each class of debtors' accounts shown separately in the accounts or group accounts, the amount set aside to any provision for doubtful debts;
- (l) separately, the total of the emoluments received, or due and receivable (whether from the company or from a related corporation) by—

- (i) directors of the company engaged in the full-time employment of the company and its related corporations (including all bonuses and commissions received or receivable by them as employees but not including the amount received or receivable by them by way of fixed salary as employees);
 - and
 - (ii) other directors of the company, including, in each case, commissions for subscribing for or agreeing to procure subscriptions for, any shares in or debentures of the company or any related corporation, and the portion, if any, of the total amount contributed or to be contributed otherwise than by the company;
- (m) the amounts (including benefits in kind) received or due and receivable by the auditors for their services to the company, separate amounts being shown in respect of—
- (i) the auditing of the accounts or group accounts;
 - and
 - (ii) other services,
- and the portion of each such amount contributed or to be contributed otherwise than by the company, with a statement whether the auditors receive any other benefits, and, if so, the general nature thereof.
- (2) There shall also be shown in the accounts or group accounts in respect of the financial year (whether by way of note or otherwise) the amount set aside for the payment of income tax attributable to the financial year.
3. There shall be shown in the accounts or group accounts in respect of the financial year (whether by way of note or otherwise), separately—
- (a) the amount of unappropriated profits or accumulated losses (however described) at the beginning of the financial year;
 - (b) the net amount of profit or loss after providing for payment of income tax attributable to the financial year;
 - (c) any amount set aside to any provision for the payment of income tax attributable to a period other than the financial year;
 - (d) any amount set aside or proposed to be set aside to any reserve stating the origin of that amount;
 - (e) any amount withdrawn, or proposed to be withdrawn, from any reserve;
 - (f) any amount set aside to a provision (other than a provision specifically provided for in this Schedule);
 - (g) any amount withdrawn from any provision where the amount withdrawn was not applied for the purposes of the provision;
 - (h) any amount set aside for redemption of share capital or of loans;
 - (i) the amount of dividends paid during the financial year and the amount of dividends proposed to be paid, excluding any amount shown in a profit and loss account or balance-sheet relating to a previous financial year as an amount proposed to be paid by way of dividends;
 - (j) the amount of any appropriation or adjustment which affects the amount of unappropriated profits or accumulated losses at the end of the financial year;
- and
- (k) the amount of unappropriated profits or accumulated losses (however described) at the end of the financial year.
4. Where in the accounts of a company or in group accounts the amounts set aside for the payment of income tax attributable to the financial year differs, or but for compensatory items would differ, by more than fifteen per centum from the amount of income tax that would be payable by the company or by the company and its subsidiaries if its taxable income for that year were equal to the amount shown in or ascertainable from the accounts or group accounts as being the amount of the net profit or loss before provision is made for the payment of income tax attributable to that year, there shall be set out an explanation of the difference, including a statement of the major items responsible for the difference and the amount, or estimated amount, of those items.
5. (1) There shall be shown separately in the accounts or group accounts as at the end of the financial year (whether by way of note or otherwise)—

- (a) the amount and particulars of authorized capital, calls in arrear and paid-up capital, a distinction being drawn in those amounts and particulars between any different classes of shares;
 - (b) where any part of the capital consists of preference shares—
 - (i) the rate of dividend on each class of preference shares;
 - (ii) the amount of arrears of dividend on each class of preference shares;
 - (iii) whether the preference shares are cumulative, non-cumulative, participating or non-participating;
 - (iv) whether the preference shares are to be redeemed or at the option of the company are liable to be redeemed;
 and
 - (v) if the preference shares are to be redeemed or at the option of the company are liable to be redeemed—the date on or before which they are to be redeemed or are liable to be redeemed, the earliest date on which the company has power to redeem them, and the amount of the premium (if any) at which they are to be redeemed or are liable to be redeemed;
 - (c) the amount of capital which is not capable of being called up except in the event of, and for the purposes of, the winding up of the company;
 - (d) the amount of capital upon which interest has been paid out of capital during the financial year (and the rate of interest so paid);
 - (e) where the company is a no-liability company—
 - (i) the number of shares forfeited and remaining unsold;
 and
 - (ii) the number of shares forfeited during the financial year, showing the number of shares forfeited in respect of each call and the amount of each such call;
 - (f) the amount of reserves of all descriptions, a separate amount being shown for each class;
 - (g) the amount of the share premium account;
 - (h) the amount of unappropriated profits or accumulated losses (if any) as shown under paragraph (k) of clause 3 of this Schedule, any accumulated losses (insofar as they have not been written off) being shown as a deduction from the amount of paid-up capital and reserves;
 - (i) the amount and particulars of provisions, there being shown separately—
 - (i) the amount of any provision for depreciation, diminution in value or amortization of assets shown as deductions from the amounts of the respective assets;
 - (ii) the amount of any provision for doubtful debts shown as deductions from the amounts of the respective debtors' accounts to which the provision relates;
 - (iii) the amount of provision for income tax, a distinction being drawn between the amount provided for current liability and that provided for future liability, and any amount provided for the purpose of its being used to counter the effect of undue fluctuations in liability for income tax being shown separately;
 and
 - (iv) the amount and purpose of any other provision shown, if appropriate, as a deduction from the amount of the asset to which the provision relates.
- (2) There shall be shown in the accounts or group accounts as at the end of the financial year (whether by way of note or otherwise) the amounts and descriptions of all current liabilities and non-current liabilities, under headings appropriate to the business of the company or of the company and its subsidiaries, and arranged in classes under those headings according to their nature or function in the business, the following being shown separately:—
- (a) bank loans;
 - (b) bank overdrafts;
 - (c) debentures held by—
 - (i) subsidiaries;
 - (ii) the holding company;

- (iii) other related corporations;
and
- (iv) other persons;
- (d) the amount due to trade creditors and on bills payable;
- (e) other amounts payable to—
 - (i) subsidiaries;
 - (ii) the holding company;and
- (iii) other related corporations;
- (f) the aggregate amount, or estimated aggregate amount, and particulars of capital expenditure contracted for, so far as the amount has not been provided for;
- (g) the amounts and descriptions of other liabilities and particulars of their nature.

(3) There shall be shown in the accounts or group accounts, if not otherwise shown, as at the end of the financial year (whether by way of note or otherwise), contingent liabilities, with a statement as to the general nature thereof and, so far as practicable, the maximum amount, or an estimate of the maximum amount, for which the company or the company and its subsidiaries could become liable in respect thereof.

(4) There shall be shown separately in the accounts or group accounts as at the end of the financial year (whether by way of note or otherwise) the amounts and descriptions of all fixed assets, intangible assets, current assets, investments and assets of any other kind, under headings appropriate to the business of the company or of the company and its subsidiaries, and arranged in classes under those headings according to their nature or function in the business, the following being shown separately:—

- (a) cash at bank and in hand;
- (b) stock on hand;
- (c) work in progress;
- (d) government, municipal and other public debentures, stock and bonds;
- (e) shares in—
 - (i) the holding company;
 - (ii) subsidiaries;
 - (iii) other related corporations;and
- (iv) other corporations;
- (f) debentures of—
 - (i) the holding company;
 - (ii) subsidiaries;
 - (iii) other related corporations;and
- (iv) other corporations;
- (g) the amount due from trade debtors and on bills receivable;
- (h) other amounts receivable from—
 - (i) the holding company;
 - (ii) subsidiaries;
 - (iii) other related corporations;and
- (iv) other persons;
- (i) the total amount outstanding of any loans made, guaranteed or secured by the company or by the company and its subsidiaries, being loans made to the directors of the company or of a related corporation, or loans made to any other corporation in which a director or directors of the company, or of a related corporation, owns or own a controlling interest;
- (j) the aggregate of the amounts of any items of goodwill and of any patents and trademarks, to the extent that they have not been written off;

(k) the amounts of each of the following, to the extent that they have not been written off—

- (i) preliminary expenses;
- (ii) expenses incurred in connection with any issue of shares or debentures;
- (iii) sums paid by way of commission in respect of any shares or debentures;
- (iv) sums allowed by way of discount in respect of debentures;
- and
- (v) sums allowed by way of discount on any issue of shares;

and

(l) the amounts and descriptions of other assets, with particulars of their nature.

6. (1) In respect of each liability or contingent liability shown in the accounts or group accounts being a liability the payment of which is secured by a charge on assets of the company or of the company and its subsidiaries, whether registered or unregistered, there shall be shown a statement that it is so secured and the extent to which it is secured, and each such liability or contingent liability shall be distinguished from any other liabilities or contingent liabilities the payment of which is not so secured.

(2) Current liabilities and current assets shall be clearly distinguished from other liabilities and assets.

(3) Where by reason of the manner in which the records of a company were kept before the date of commencement of the Companies Act Amendment Act 1971-1972, it is not possible to show separately the amounts of any classes of assets or liabilities required by this Schedule to be separately shown, there shall be shown the total amount of assets or liabilities of those classes acquired or incurred before that date, and the separate amounts of assets or liabilities of those classes acquired or incurred after that date.

7. (1) In respect of all fixed assets, investments, stock on hand and work in progress shown in the balance-sheet there shall be stated the method of arriving at the amount thereof, and when more than one method is used a separate total shall be shown in respect of each of the methods used.

(2) There shall be shown in respect of each class of fixed assets or investments referred to in the accounts or group accounts—

- (a) the cost thereof, or (at the option of the directors) where they have been valued, the amount thereof as so valued, and, where the valuation applies only to part of such a class, separate totals for such of the assets as have been valued and for the remainder of the assets of that class;
- (b) the aggregate amount written off in respect of each class or part of a class since the date of acquisition or valuation, as the case may be;

and

- (c) the difference between the amounts shown under paragraph (a) and paragraph (b) of this subclause.

(3) For the purposes of subclause (2) of this clause, the net amount at which any assets stood in the company's records at the date of commencement of the Companies Act, 1962, as amended (after deduction of the amounts previously provided or written off for depreciation, diminution in value or amortization) shall, if the figures relating to the period before that date cannot be obtained without unreasonable expense or delay, be treated until a valuation is made, as if it were the amount of a valuation of those assets made on that date, and where any of those assets are sold, that net amount (less the net amount at which the assets sold stood in the records as at that date, or if no separate amount is available, their estimated value as at that date) shall be treated as if it were the amount of a valuation of the remaining assets made on that date.

(4) Subparagraphs (b) and (c) of subclause (2) of this clause do not apply to fixed assets the replacement of which is dealt with wholly or partly—

- (a) by making any provision for renewal or replacement and charging the cost of renewal or replacement against that provision;

or

- (b) by charging the cost of renewal or replacement directly against revenue, but in respect of those assets there shall be stated—

- (c) the method by which their renewal or replacement is dealt with;
and
 - (d) the aggregate amount of the provisions (if any) made for renewal or replacement and not used.
- (5) If any investments of a class for which paragraph (d), (e) or (f) of subclause (4) of clause 5 requires a separate amount to be shown are quoted on any prescribed Stock Exchange in Australia or elsewhere, a separate total shall be shown for the quoted investments of each class, and there shall also be shown the aggregate quoted market value, calculated on the official quotation of that Exchange, of the quoted investments of each class.
- (6) Where the amount of any fixed asset or investment (other than an investment the quoted market value of which has been included in an aggregate market value in accordance with subclause (5) of this clause) is shown at a valuation or at a valuation less amounts written off, there shall be shown (whether by way of note or otherwise) the date of the valuation, and whether the valuation was made by an officer of the company or of a related corporation or by a person not being such an officer.
- (7) If the valuation referred to in subclause (6) of this clause was made after the date of commencement of the Companies Act Amendment Act, 1971-1972, by a person not being such an officer, the name of the person who valued it and particulars of his qualifications shall be shown in the first accounts in which reference is made to the valuation.
- (8) For the purposes of subclause (6) of this clause, the expression "officer's valuation" may be used to indicate a valuation made by an officer of the company or of a related corporation, and the expression "independent valuation" may be used to indicate a valuation made by a person not being such an officer.
- (9) In addition to any other information required to be shown, there shall be shown separately (whether by way of note or otherwise), in respect of land or interests in land acquired or held for sale or resale to the extent to which they have not been written off—
- (a) the total cost of acquisition (exclusive of any costs of surveys, roads and drainage and other development expenses);
 - (b) the total of any development expenses capitalized;
and
 - (c) the total of any amounts of rates, taxes or interest and any other amounts capitalized.
8. There shall be shown (whether by way of note or otherwise) in the balance-sheet of every company which is a borrowing corporation or a guarantor corporation a schedule setting out, separately, estimates of the amounts payable by, and the debts payable to, the company—
- (a) not later than two years;
 - (b) later than two years but not later than five years;
and
 - (c) later than five years,
- after the end of the financial year.
9. (1) Group accounts of a holding company shall state (whether by way of note or otherwise)—
- (a) the name and place of incorporation of each subsidiary, and if any business of the subsidiary is carried on in a country other than Australia, the name of that country;
 - (b) the amount of the holding company's investment in each class of the share capital of each subsidiary;
 - (c) the percentage of each class of the shares in each subsidiary held by the holding company;
and
 - (d) where the financial year of a subsidiary does not coincide with the financial year of the holding company, the date on which the financial year of the subsidiary ends.
- (2) Where any consolidated accounts are to be laid before a holding company at its annual general meeting, transactions and balances between the corporations covered by the consolidated accounts shall be eliminated in determining any amounts to be stated in the consolidated accounts.

(3) Subject to subclause (4) of this clause, where separate accounts of a subsidiary are to be laid before the holding company at its annual general meeting as part of the group accounts, the accounts of the subsidiary shall as far as practicable be in the same form as the accounts of the holding company.

(4) In the case of a subsidiary incorporated outside the State (whether or not it has established a place of business in the State), it shall be sufficient compliance with the provisions of subclause (3) of this clause if the accounts of the subsidiary—

- (a) are in such form;
- (b) are reported on by an auditor in such manner;
- (c) contain such particulars;
- and
- (d) include or are accompanied by such documents (if any),

as is or are required by the law of its place of incorporation concerning accounts to be laid before the subsidiary in general meeting.

(5) Where group accounts are prepared otherwise than as one set of consolidated accounts covering the group, the directors of the holding company shall certify on, or in a certificate attached to, the accounts—

- (a) that the preparation of one such set of consolidated accounts is impracticable or that it is preferable, in the interests of the shareholders, that the accounts be prepared in the form in which they are prepared (as the case may be), for reasons to be stated in the certificate;

and

- (b) that, in the opinion of the directors, the accounts so prepared are not significantly affected by transactions and balances between the corporations covered by the accounts, except to the extent stated in any notes forming part of the accounts.

(6) Where any accounts included in group accounts laid before a holding company at its annual general meeting are presented in a form or grouping different from that in which the immediately preceding group accounts (if any) were so laid, the directors shall certify on, or in a certificate attached to, the accounts the names of the corporations the accounts of which have been so presented and the reasons for presenting them in that form or grouping.

(7) A certificate under subclause (5) or (6) of this clause shall be signed by not less than two directors.

10. All amounts shown in the accounts or group accounts shall be expressed in Australian currency, and where any conversion has been made otherwise than on the basis of the rate of exchange current at the end of the financial year of the company or holding company an explanation of the methods used in calculating the conversion shall be given.

11. (1) Except in the case of the first accounts after the incorporation of the company, and in the case of the first group accounts after a company becomes a holding company there shall be shown—

- (a) in every balance-sheet the corresponding amounts as at the end of the immediately preceding financial year;

and

- (b) in every profit and loss account the corresponding amounts for the corresponding period of the immediately preceding financial year,

and where the respective financial years are not equal in length, the periods covered shall be clearly indicated by way of note or otherwise.

(2) If—

- (a) the balance-sheet does not include an item corresponding to an item in the balance-sheet as at the end of the immediately preceding financial year;

or

- (b) the profit and loss account does not include an item corresponding to an item in the profit and loss account covering the corresponding period of the immediately preceding financial year,

that previous item and the amount thereof shall be shown.

12. Where the accounts or group accounts could be misleading by reason of a failure to explain the method used in dealing with, or calculating the amount of, any item or information included in or excluded from the accounts or group accounts, there shall be stated (whether by way of note or otherwise) the method used to deal with, or calculate the amount of, the item or information.

(2) Any sums which consist of or are in the nature of interest, accommodation charges, service charges, maintenance charges or insurance premiums, being income that has not been earned at the end of the financial year, shall not be included in the gross amount of debts owing to the company or the company and its subsidiaries unless that unearned income is shown as a deduction from that gross amount.

(3) A short statement of the method by which the amount of unearned income has been calculated shall be included in the accounts or group accounts (whether by way of note or otherwise).

56. The Tenth Schedule to the principal Act is repealed and the following schedule is enacted and inserted in its place:—

Repeal of tenth schedule of principal Act and enactment of schedule in its place.

TENTH SCHEDULE

PART A

Section 180c.

Requirements with which Statement Given by Offeror to Comply

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

2. The statement shall—

- (a) where the offeror is or includes one or more corporations, specify the names, occupations and addresses of all the directors of the corporation or of each corporation;
- (b) where the offeror is or includes one or more corporations, contain a summary of the principal activities of the corporation or of each corporation;
- (c) set out full particulars of the shares in the offeree company to which the offeror is entitled or, if there are no such shares, set out a statement to that effect;
- (d) set out full particulars of marketable securities of the offeree company (not being shares referred to in paragraph (c) of this clause) to which the offeror is entitled or, if there are no such securities, set out a statement to that effect;
- (e) where the offeror is or includes one or more corporations and shares may be acquired for a consideration that is or includes shares in, or marketable securities, of that corporation or of any of those corporations, set out, in respect of that corporation or of each such corporation—
 - (i) the reports that, if the statement were a prospectus issued on the date on which the statement is given to the offeree company, would be required to be set out in a statement under paragraphs 20 and 23 of the Fifth Schedule;

and

 - (ii) full particulars of any alterations in the capital structure of the corporation and of any subsidiary of the corporation during the period of five years immediately preceding the date the statement is given to the offeree company and particulars of the source of any increase in capital;

and

- (f) where the offeror is or includes one or more natural persons, specify the name, address and occupation of that person or of each of those persons and set out a summary of the principal business activities of that person or of each of those persons and specify the corporations (if any) of which that person or any of those persons is a director or officer, it being sufficient, where he is a director of one or more subsidiaries of the same holding company to specify that he holds one or more directorships in a group of companies that may be described by the name of the holding company with the addition of the word "Group".

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

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

5. The statement shall set out—

(a) whether it is proposed in connection with the take-over scheme that any payment or other benefit shall be made or given to any director of the offeree company or of any corporation that is, by virtue of subsection (5) of section 6, deemed to be related to that company as compensation for loss of office or as consideration for, or in connection with, his retirement from office and, if so, particulars of the proposed payment or benefit in respect of each such director;

(b) whether there is any other agreement or arrangement made between the offeror, or, where the offeror is two or more persons, any of those persons, and any of the directors of the offeree company in connection with or conditional upon the outcome of the scheme and, if so, particulars of any such agreement or arrangement;

(c) whether, within the knowledge of the offeror or, where the offeror is two or more persons, within the knowledge of any of those persons, the financial position of the offeree company has materially changed since the date of the last balance-sheet laid before the company in general meeting and, if so, full particulars of the change known to the offeror or to any of those persons;

and

(d) where there is any agreement or arrangement whereby any shares acquired by the offeror or, where the offeror is two or more persons, by any of those persons, in pursuance of the scheme will or may be transferred to any other person and, if so—

(i) the names of the persons who are parties to the agreement or arrangement and the number, description and amount of the shares which will or may be so transferred and the name of the transferee;

and

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

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

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

8. Where the marketable securities are listed on or dealt in on a Stock Exchange, the statement shall state the fact and specify the Stock Exchanges concerned and specify—

(a) the latest available market sale price before the date on which the statement is given to the offeree company;

(b) the highest and lowest market sale price during the three months immediately preceding that date and the respective dates of the relevant sales;

and

- (c) where the take-over scheme has been the subject of a public announcement in newspapers or by any other means before the statement is given to the offeree company, the latest available market sale price immediately before the public announcement.

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

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

11. Where marketable securities are to be issued, the information required under clauses 8, 9 and 10 shall be given in respect of such marketable securities as have been issued and are of the same class as those to be issued.

PART B

Requirements with which Statement Given by Offeree Company to Comply

1. The statement shall set out—
 - (a) whether the board of directors of the offeree company recommends to shareholders the acceptance of take-over offers made, or to be made, by the offeror under the take-over scheme;
 - or
 - (b) that the board of directors of the offeree company does not desire to make a recommendation or consider themselves not justified in making a recommendation.
2. The statement shall set out—
 - (a) the number, description and amount of marketable securities of the offeree company held by or on behalf of each director of that company or, in the case of a director where none are so held, that fact;
 - (b) in respect of each director of the offeree company by whom, or on whose behalf, shares in the offeree company are held—
 - (i) whether the director intends to accept any take-over offer that may be made in respect of those shares;
 - or
 - (ii) that the director has not decided whether he will accept such a take-over offer;
 - (c) where the offeror is or includes one or more corporations, whether any marketable securities of that corporation or of any of those corporations are held by, or on behalf of, any director of the offeree company and, if so, the number, description and amount of those securities;
 - (d) whether it is proposed that any payment or other benefit shall be made or given to any director of the offeree company or of any corporation that is, by virtue of subsection (5) of section 6, deemed to be related to that company as compensation for loss of office or as consideration for, or in connection with, his retirement from office and, if so, particulars of the proposed payment or benefit;
 - (e) whether there is any other agreement or arrangement made between any director of the offeree company and any other person in connection with or conditional upon the outcome of the take-over scheme and, if so, particulars of any such agreement or arrangement;
 - (f) whether any director of the offeree company has an interest in any contract entered into by the offeror or, where the offeror is two or more persons, any of those persons and, if so, particulars of the nature and extent of each such interest;

(g) if the shares to which the scheme relates are not listed on or dealt in on a Stock Exchange, all the information that the offeree company has as to the number, amount and price at which any such shares have been sold in the six months preceding the date on which the statement under paragraph (b) of subsection (1), or under paragraph (b) of subsection (3), of section 180c was given to the offeree company;

and

(h) whether the financial position of the offeree company has materially changed since the date of the last balance-sheet laid before the company in general meeting and, if so, full particulars of the change.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

J. M. NAPIER, Governor's Deputy