



ANNO VICESIMO OCTAVO

**ELIZABETHAE II REGINAE**

A.D. 1979

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**No. 54 of 1979**

An Act to amend the Companies Act, 1962-1974.

[Assented to 22nd March, 1979]

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, 1979". Short titles.

(2) The Companies Act, 1962-1974, is hereinafter referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Companies Act, 1962-1979".

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

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

3. Section 3 of the principal Act is amended—

(a) by striking out the item:

PART VIA—SPECIAL INVESTIGATIONS ss. 168-180aa

and inserting in lieu thereof the item:

PART VIA—SPECIAL INVESTIGATIONS ss. 168-180;

and

(b) by striking out the item:

PART XIII—SPECIAL PROVISIONS RELATING TO  
LOCAL PROPRIETARY AND PRIVATE  
COMPANIES ss. 397-399

Amendment of  
principal Act,  
s. 3—  
Division into  
Parts.

and inserting in lieu thereof the item:

PART XIII—THE CORPORATE AFFAIRS COMMISSION ss. 397-405

Amendment of principal Act, s. 4—  
Repeal and Savings First Schedule

4. Section 4 of the principal Act is amended—

(a) by striking out paragraph (c) of subsection (3) and inserting in lieu thereof the following paragraph:—

(c) the operation of the Industrial Conciliation and Arbitration Act, 1972-1979;

and

(b) by striking out subsection (13).

Amendment of principal Act, s. 5—  
Interpretation.

5. Section 5 of the principal Act is amended—

(a) by striking out from the definition of “commencement of this Act” the passage “subsection (2) of”;

(b) by inserting after the definition of “commencement of this Act” the following definitions:—

“Commission” means the Corporate Affairs Commission constituted under this Act:

“Commissioner” means the person holding, or acting in, the office of Commissioner for Corporate Affairs under this Act;;

(c) by striking out the definition of “company” and inserting in lieu thereof the following definition:—

“company” means a company incorporated pursuant to this Act or pursuant to any corresponding previous enactment;;

(d) by striking out the definition of “current liability”;

(e) by inserting after the definition of “debenture” the following definition:—

“deed” includes any instrument having the effect of a deed under any Act;;

(f) by inserting after the definition of “default penalty” the following definition:—

“Deputy Commissioner” means the person holding, or acting in, the office of Deputy Commissioner for Corporate Affairs under this Act;;

(g) by striking out the definition of “director” and inserting in lieu thereof the following definition:—

“director” includes any person occupying or acting in the position of director of a corporation by whatever name called and whether validly appointed to occupy or duly authorized to act in that position or not, and includes any person in accordance with whose directions or instructions the directors of a corporation are accustomed to act;;

(h) by striking out paragraph (a) from the definition of “foreign company” and inserting in lieu thereof the following paragraph:—

- (a) a company, corporation, society, association or other body incorporated outside the State, not being a corporation sole or a body corporate that is incorporated within the Commonwealth and is a public authority or an instrumentality or agency of the Crown whether in right of the Commonwealth or of a State of the Commonwealth;;
- (i) by striking out the definition of “non-current liability”;
- (j) by striking out the definition of “officer” and inserting in lieu thereof the following definition:—
- “officer” in relation to a corporation includes—
- (a) any director, secretary or employee of the corporation;
- (b) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument;
- (c) any official manager or deputy official manager of the company appointed under the provisions of Part IX;
- (d) any liquidator of the corporation appointed in a voluntary winding up;
- and
- (e) a person made responsible in any way for the management of the corporation pursuant to a scheme of compromise or arrangement under Part VII;
- but does not include—
- (f) any receiver who is not also a manager;
- (g) any receiver and manager appointed by the Court;
- or
- (h) any liquidator appointed by the Court or by the creditors;
- (k) by striking out from the definition of “official liquidator” the figures “11” and inserting in lieu thereof the figures “231”;
- (l) by striking out the definition of “private company”;
- (m) by striking out from the definition of “public Company” the passage “or a private company”;
- (n) by striking out the definition of “registered liquidator” and inserting in lieu thereof the following definition:—
- “registered liquidator” means a registered company auditor who has been registered by the Board as a liquidator;;
- (o) by striking out the definition of “Registrar”;
- (p) by inserting after the definition of “repealed Act” the following definition:—
- “reproduction” in relation to a document means a machine-copy of the document or a print made from a transparency of the document; and “reproduce” and any derivatives thereof have a corresponding meaning;;

(q) by inserting after the definition of "Table B" the following definitions:—

"transparency" in relation to a document means—

- (a) a developed negative or positive photograph of that document (in this definition referred to as an original photograph) made, on a transparent base, by means of light reflected from, or transmitted through, the document;
- (b) a copy of an original photograph made by the use of photo-sensitive material (being photo-sensitive material on a transparent base) placed in surface contact with the original photograph;

or

- (c) any one of a series of copies of an original photograph, the first of the series being made by the use of photo-sensitive material (being photo-sensitive material on a transparent base) placed in surface contact with a copy referred to in paragraph (b) of this definition, and each succeeding copy in the series being made, in the same manner, from any preceding copy in the series;

"undischarged bankrupt" means a person who, under a law in force in the Commonwealth or in a Territory of the Commonwealth relating to bankruptcy or insolvency, is a bankrupt in respect of a bankruptcy from which he has not been discharged;

(r) by striking out the definition of "the profit or loss";

(s) by inserting at the end of subsection (5) the passage "(but not including a document which merely acknowledges the receipt of the money in any case where, in respect of the money, the corporation issues in compliance with section 38 the document prescribed by subsection (2) of section 38 and complies with the other requirements of section 38 of this Act)";

and

(t) by striking out paragraph (d) of subsection (6) and inserting in lieu thereof the following paragraph:—

- (d) made to a dissenting offeree within the meaning of section 180x of this Act or, within the meaning of section 185 of this Act, to existing members of a transferor company with respect to shares in a transferee company or, within the meaning of section 270 of this Act, to existing members of a company and relates to shares in the company.

6. Section 6a of the principal Act is repealed and the following section is enacted and inserted in its place:—

Repeal of s. 6a of principal Act and enactment of section in its place.

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

Certain interests in shares to be relevant interests for certain purposes.

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

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

or

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

(b) for the purposes of sections 126 and 127 of this Act, if that person has power to dispose of, or to exercise control over the disposal of, that share;

(c) for the purposes of Part VI B of this Act, if that person has power—

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

or

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

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

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

or

(b) to dispose of, or exercise control over the disposal of, a share, is express or implied or formal or informal, is exercisable alone or jointly with another person or other persons, cannot be related to a particular share, or is, or is capable of being made, subject to restraint or restriction and any such power exercisable jointly with another person or other persons shall, for those purposes, be deemed to be exercisable by either or any of those persons.

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

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

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

or

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

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

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

(e) a person has, the associates of a person have, or a person and his associates have power to exercise, or to control the exercise of, not less than fifteen per centum of the votes that may be exercised pursuant to rights to vote attached to the voting shares of the body corporate,

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

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

(a) a corporation that, by virtue of subsection (5) of section 6 of this Act, 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 exercise of a power referred to in subsection (4) of this section;

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

(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 the exercise of that power;

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 accustomed or under an obligation, whether formal or informal, to act in relation to the exercise of that power.

(6) Where a person—

(a) has entered into an agreement with respect to a share;

(b) has a right relating to a share, whether the right is enforceable presently or in the future and whether on the fulfilment of a condition or not;

or

(c) has an option with respect to a share,

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

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

(a) for the purposes of Division IIIA of Part IV, sections 126 and 127 and Part VI B of this Act—

(i) if the ordinary business of the person who has the relevant interest includes the lending of money and he has authority to exercise his powers as the holder of the relevant interest only by reason of a security given for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money;

(ii) if the relevant interest is that of a person who has it by reason of his holding a prescribed office;

(iii) if the ordinary business of the person who has the relevant interest includes dealing in securities within the meaning of the Securities Industry Act, 1979, and he has authority to exercise his powers as the holder of the relevant interest only by reason of instructions given to him by or on behalf of another person to dispose of that share on behalf of that person in the ordinary course of business;

or

(iv) if the share is subject to a trust, the relevant interest is that of a trustee and a beneficiary is deemed, by subsection (6) of this section, to have that relevant interest by virtue of a presently enforceable and unconditional right referred to in paragraph (b) of that subsection;

and

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

(8) A relevant interest in a share shall not be disregarded by reason only of—

(a) its remoteness;

or

(b) the manner in which it arose.

7. Section 7 of the principal Act is repealed and the following section is enacted and inserted in its place:—

7. (1) The Commission shall have the general administration of this Act.

Repeal of s. 7 of principal Act and enactment of section in its place.

Administration of Act.

(2) The Commission shall maintain an office at which documents may be submitted for lodgement or registration under this Act.

(3) The Commission may incorporate with the registers kept by it under this Act such documents, instruments and registers kept by the Registrar of Companies under this Act or any corresponding previous enactment as it thinks fit.

(4) For the purpose of ascertaining whether the provisions of this Act or of a corresponding previous enactment have been or are being complied with the Commissioner or a person authorized by the Commission—

(a) may inspect any books required by or under this Act or a corresponding previous enactment to be kept by, or by a person in respect of, a corporation (whether or not the corporation has been dissolved);

and

(b) may, where the Commissioner considers it necessary to inspect books kept by a banker who acts or has acted as banker to the corporation, inspect books kept by that banker that relate to the corporation (whether or not the corporation has been dissolved).

(5) No person shall make an inspection in pursuance of subsection (4) of this section unless he has made a declaration in the prescribed form.

(6) The Commissioner or a person authorized by the Commission shall not make an inspection in pursuance of subsection (4) of this section of books kept by a banker relating to a corporation unless the Commissioner or other person has served on the banker notice in writing to the effect that he intends to inspect books kept by the banker that relate to the corporation named in the notice.

(7) A person—

(a) who makes an inspection in pursuance of subsection (4) of this section before he has made a declaration referred to in subsection (5) of this section;

or

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

shall be guilty of an offence against this Act.

Penalty: Two hundred dollars.

(8) Where the regulations prescribe for the purposes of this section an office held under the law of the State or of the Commonwealth or of another State or a Territory of the Commonwealth, it shall not be a

contravention of subsection (7) of this section to divulge or communicate to the holder of that office information connected with the duties of the office.

(9) An officer of a corporation, person required to keep any books in respect of a corporation or a banker, on being required by the Commissioner or a person authorized by the Commission, shall produce any book to which the requirement relates.

Penalty: Two hundred dollars.

(10) An officer of a corporation, person required to keep any books in respect of a corporation or a banker, on being required by the Commissioner or a person authorized by the Commission, shall state where, to the best of his knowledge and belief, a book is at the time the request is made.

Penalty: Two hundred dollars.

(11) A corporation, officer of a corporation, person required to keep any books in respect of a corporation or a banker shall not obstruct or hinder the Commissioner or a person authorized by the Commission while exercising a power under subsection (4) of this section.

Penalty: Two hundred dollars.

(12) There shall be paid to the Commission such fees as are prescribed.

(13) Where a fee is payable to the Commission for or in respect of the lodging of a document with the Commission and the document is submitted without payment of the fee, the document shall be deemed not to have been lodged until the fee has been paid to the Commission.

8. Section 8 of the principal Act is amended by striking out subsections (11) and (12) and inserting in lieu thereof the following subsections:—

Amendment of principal Act, s. 8—  
Companies Auditors Board.

(11) There shall be a Registrar and Deputy Registrar of the Board.

(12) The Registrar and Deputy Registrar shall be appointed, and shall hold office, under the Public Service Act, 1967-1978.

(13) The offices of Registrar and Deputy Registrar of the Board may each be held in conjunction with any other office in the Public Service of the State.

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

Repeal of s. 9 of principal Act and enactment of section in its place.  
Company auditors and liquidators.

9. (1) Subject to subsection (2) of this section, a person—

(a) who was registered as a company auditor under the repealed Act;

(b) who is a member of the Institute of Chartered Accountants in Australia or the Australian Society of Accountants or any other body established outside Australia prescribed on the recommendation of the Board as a body for the purposes of this subsection;

- (c) who is a registered company auditor in any State or Territory of the Commonwealth;
- (d) who holds a degree or a diploma from any University in the Commonwealth and who has passed examinations in the course for the degree or diploma in such subjects, under whatever name, as the appropriate authority of the University certifies to the Board to represent a course of study in accountancy and auditing of three years and in commercial law (including company law) of two years duration;
- (e) who holds a degree or diploma in accountancy of the South Australian Institute of Technology and has passed examinations in the course for such degree or diploma in such subjects under whatever name as the appropriate authority of the Institute certifies to the Board to represent all of the available auditing units of the course or the award in accountancy of a prescribed College of Advanced Education;

or

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

is, if the Board is satisfied with his general conduct and character and is satisfied that he has sufficient practical experience in accountancy and has the ability to act as a company auditor, entitled on payment of the prescribed fee to be registered as a company auditor.

(2) The Board may refuse to register as a company auditor a person who is not resident in a State or Territory of the Commonwealth.

(3) Any registered company auditor may apply to the Board for registration or for the renewal of his registration as a liquidator and, subject to subsection (4) of this section, the Board if satisfied as to his experience and capacity shall, on his giving security in the prescribed manner and amount and on payment of the prescribed fee, register such person or renew such person's registration, as the case may be, as a liquidator.

(4) The Board may refuse to register as a liquidator a person who is not resident in a State or Territory of the Commonwealth.

(5) A person qualified to be appointed as a registered company auditor may apply to the Board for registration as a liquidator in respect of the winding up of a specified corporation and, subject to subsection (4) of this section, the Board if satisfied—

- (a) as to the experience and ability of that person;
  - (b) that the nature of the property or business of the corporation or the interests of the creditors or contributories generally so require;
- and
- (c) that the prescribed fee has been paid,

shall register that person as a liquidator in respect of that corporation.

(6) Subject to subsection (7) of this section, a person who is a registered company auditor or registered liquidator shall, on payment of the prescribed fee, be entitled to renewal of his registration.

(7) The Board may refuse to renew the registration of a registered company auditor or registered liquidator who—

(a) is not resident in a State or Territory of the Commonwealth;

or

(b) does not at least three months before his registration ceases to be in force apply to the Board for renewal of his registration and pay to the Board the prescribed fee.

(8) A registration and a renewal of registration of a registered company auditor or registered liquidator shall be in force until the thirty-first day of March in the year following the year in which the registration or renewal is effected.

(9) The Board after giving notice to a person who is a registered company auditor or a registered liquidator may inquire into the conduct, character and ability of that person, subject to his being given an opportunity of being heard.

(10) For the purposes of an inquiry under subsection (9) of this section, the Chairman of the Board may by notice in the prescribed form require a person to appear at the inquiry and give evidence on oath or affirmation (which the Chairman is hereby authorised to administer) as to a matter in relation to the subject-matter of the inquiry and the notice may require the production of books in the custody or under the control of that person.

(11) In any enquiry under subsection (9) of this section, a registered company, auditor or registered liquidator may be represented by counsel.

(12) If, at an inquiry under subsection (9) of this section, a person who is a registered company auditor or a registered liquidator is found to have been guilty of conduct discreditable to an auditor or liquidator, as the case may be, or is found to be incapable of performing the duties of a registered company auditor or registered liquidator, as the case may be, the Board may, as it thinks fit, punish or deal with him in any one or more of the following ways—

(a) cancel his registration and order the removal of his name from the register;

(b) suspend his registration for a period not exceeding one year;

(c) impose on him a fine not exceeding one thousand dollars;

(d) admonish or reprimand him;

(e) require him to give an undertaking to abstain from some specific conduct;

(f) require him to pay within a specified time the costs of and incidental to the inquiry by the Board.

(13) The Board shall give to the registered company auditor or registered liquidator to whom a decision of the Board under subsection (12) of this section relates, notice of that decision.

(14) The Board may, in an inquiry under subsection (9) of this section, find that a failure to honour an undertaking referred to in paragraph (e) of subsection (12) of this section is conduct discreditable to an auditor or liquidator, whether or not, in a case referred to in this subsection, the amount payable has been recovered under subsection (16) of this section.

(15) In addition to its other powers under this section the Board may, where it is satisfied in relation to a registered company auditor or registered liquidator—

(a) that his registration has been cancelled and his name removed from the register or his registration has been suspended in another State or in a Territory of the Commonwealth;

and

(b) that either an appeal against the cancellation or suspension has been disallowed or the time for appealing against the cancellation or suspension has expired without an appeal having been made,

cancel his registration and order the removal of his name from the register or suspend his registration in the State for a period not exceeding one year.

(16) The amount of a fine or costs imposed under subsection (12) of this section may be recovered in a court of competent jurisdiction as a debt due to the Crown.

(17) A person aggrieved by a decision of the Board under this section may within one month from the date of service of notice of the decision, appeal to the Court from the decision and the Court may, upon the hearing of the appeal, if it thinks fit, confirm, vary or reverse the decision and, if it thinks fit, may direct the Board to register or renew the registration of a person whom the Board has refused to register or whose registration the Board has refused to renew.

(18) A decision of the Board cancelling, suspending or refusing to renew the registration of a registered company auditor or registered liquidator takes effect upon his being served with notice of the decision.

(19) Notice of a decision of the Board in an enquiry under subsection (9) of this section shall be served on the person who is the subject of that enquiry either personally or by post directed to his last known address.

(20) Where the registration of a person has been cancelled under this section that person shall not again be registered as a company auditor or liquidator without the express direction of the Board or of the Court.

(21) A person who is, or is for the time being exercising the powers and performing the duties of, the Auditor-General of the Commonwealth or of a State or Territory of the Commonwealth shall be deemed to be a registered company auditor for the purposes of this and any other Act.

11. Section 11 of the principal Act is repealed.

Repeal of  
s. 11 of  
principal Act.

12. Sections 12 and 13 of the principal Act are repealed and the following sections are enacted and inserted in their place:—

Repeal of  
ss. 12 and 13  
of principal  
Act and  
enactment of  
sections in  
their place.

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

Registers.

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

- (a) inspect any document filed or lodged with the Commission;
- (b) require a certificate of the incorporation of any company or any other certificate issued under this Act to be given by the Commission;

or

- (c) require a copy of or extract from any document kept by the Commission to be given or given and certified by the Commission.

(3) If a transparency or reproduction of a document is produced for inspection, a person shall not be entitled pursuant to subsection (2) of this section to require the production of the original of that document.

(4) The reference in paragraph (c) of subsection (2) of this section to a document includes, where a reproduction or transparency of that document has been incorporated with a register kept by the Commission, a reference to that reproduction or transparency and where such a reproduction or transparency has been so incorporated a person shall not be entitled pursuant to that paragraph to a copy of or extract from the original of that document.

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

(6) In any legal proceedings a certificate under the seal of the Commission that a requirement of this Act specified in the certificate—

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

or

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

shall be received as *prima facie* evidence of the matters specified in the certificate.

(7) If the Commission is of opinion that any document submitted to the Commission—

- (a) contains matter contrary to law;
- (b) by reason of any omission or misdescription has not been duly completed;
- (c) has not been completed with sufficient particularity;

(d) does not comply with the requirements of this Act;

or

(e) contains any error, alteration or erasure,

the Commission may refuse to register or receive the document and require that the document be appropriately amended or completed and re-submitted or that a fresh document that provides the information required by the Commission be submitted in its place or, where the document has not been duly completed, the Commission may require that a supplementary document in the prescribed form be lodged.

(8) The Commission may require a person who submits a document to the Commission to produce to the Commission such other document, or give to the Commission such information, as the Commission reasonably considers necessary in order to form an opinion whether the Commission may refuse to register or receive the document under subsection (7) of this section.

(9) Any person aggrieved by the refusal of the Commission to register any corporation or to register or receive any document or by any other act or decision of the Commission may appeal to the Court which may confirm the refusal, act or decision or give such directions in the matter as seem proper or otherwise determine the matter but this subsection shall not apply to any act or decision of the Commission—

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

or

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

(10) The Commission may, if in the opinion of the Commission it is no longer necessary or desirable to retain them, destroy or give to the Libraries Board of South Australia, subject to the provisions of the Libraries and Institutes Act, 1939-1977, or otherwise dispose of—

(a) in the case of a corporation—

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

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

or

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

or

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

or

(c) any document a transparency of which has been incorporated with a register kept by the Commission.

(11) If a corporation or person, having made default in complying with any provision of this Act or of any other law which requires the lodging or filing in any manner with the Commission of any return, account or other document or the giving of notice to the Commission on any matter, fails to make good the default within fourteen days after the service on the corporation or person of a notice requiring him to make good that default, the Court may, on an application by any member or creditor of the corporation or by the Commission, make an order directing the corporation and any officer thereof or that person to make good the default within such time as is specified in the order.

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

(13) The Commission may serve notice on a corporation or person directing that corporation or person to comply with a requirement under subsection (7) of this section.

(14) A corporation or person who fails to comply with a notice served on him under subsection (13) of this section within fourteen days of service shall be guilty of an offence against this Act.

Penalty: Two hundred dollars. Default Penalty.

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

13. (1) If, in the case of any corporation incorporated or registered in the State, the memorandum or articles or any other document relating to the corporation filed or lodged with the Commission has been lost, or has been destroyed otherwise than pursuant to paragraph (c) of subsection (10) of section 12 of this Act, the corporation may apply to the Commission for leave to lodge a copy of the document as originally filed or lodged.

Re-lodging  
of lost  
registered  
documents.

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

(3) The Commission upon being satisfied—

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

(b) of the date of the filing or lodging thereof with the Commission;

and

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

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

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

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

(6) No fee shall be payable upon the lodging of a document lodged in pursuance of this section.

(7) Where a transparency of a document referred to in subsection (1) of this section has been incorporated with a register kept by the Commission and is lost or destroyed as referred to in that subsection, the foregoing provisions of this section shall have effect as if the document of which it is a transparency had been so lost or destroyed.

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

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

(a) in the case of—

(i) an association or partnership formed for the purpose of carrying on the profession or calling of accountancy;

or

(ii) any profession or calling declared by proclamation to be a profession or calling which is not customarily carried on in the Commonwealth by a corporation,

of more than one hundred persons;

Amendment of  
principal Act,  
s. 15—  
Proprietary  
company.

14. Section 15 of the principal Act is amended—

(a) by striking out from subsection (2) the passage “the limitation and prohibitions” and inserting in lieu thereof the passage “the restriction, limitation and prohibitions”;

(b) by striking out from subsection (2) the passage “each such limitation and prohibition that is not so included” and inserting in lieu thereof the passage “that restriction and limitation and those prohibitions”;

(c) by inserting at the end of subsection (2) the passage “and a restriction on the right to transfer its shares that is so deemed to be included in its articles shall be deemed to be a restriction that prohibits the transfer of shares except to a person approved by the directors of the company”;

(d) by striking out from subsection (3) the passage “Where a limitation or prohibition” and inserting in lieu thereof the passage “Where a restriction, limitation or prohibition”;

and

- (e) by striking out from subsection (3) the passage “that limitation or prohibition” and inserting in lieu thereof the passage “that restriction, limitation or prohibition”.

15. Section 16 of the principal Act is amended—

Amendment of  
principal Act,  
s. 16—  
Registration  
and  
incorporation.

- (a) by striking out from subsection (1) the word “Registrar” wherever it occurs and inserting in lieu thereof, in each case, the word “Commission”;
- (b) by striking out from subsection (2) the passage “The Registrar may, if he thinks fit” and inserting in lieu thereof the passage “The Commission may, if the Commission thinks fit”;
- (c) by striking out from subsection (2) the passage “and the Registrar may” and inserting in lieu thereof the passage “and the Commission may”;
- and
- (d) by striking out from subsection (3) the passage “the Registrar shall certify under his hand and seal” and inserting in lieu thereof the passage “the Commission shall certify under the seal of the Commission”.

16. Section 20 of the principal Act is amended by striking out from paragraph (c) of subsection (2) the word “petition” and inserting in lieu thereof the word “proceedings”.

Amendment of  
principal Act,  
s. 20—  
*Ultra vires*  
transactions.

17. Section 21 of the principal Act is amended—

Amendment of  
principal Act,  
s. 21—  
General  
provisions as  
to alteration  
of  
memorandum.

- (a) by striking out the word “Registrar” wherever it occurs and inserting in lieu thereof, in each case, the word “Commission”;
- (b) by striking out from subsection (3) the passage “lodged with him under this Act that affects the memorandum of a company and, where an order is so registered, shall certify the registration of that order” and inserting in lieu thereof the passage “lodged with the Commission under this Act that affects the memorandum of a company and shall certify the registration of every such order.”;
- and
- (c) by inserting after subsection (3) the following subsection:—
- (3a) Any alteration of the memorandum of a company referred to in subsection (3) of this section shall take effect seven days from the date of the resolution, order or other document.

18. Section 22 of the principal Act is amended—

Amendment of  
principal Act,  
s. 22—  
Names of  
companies.

- (a) by striking out from subsection (1) the word “Registrar” wherever it occurs and inserting in lieu thereof, in each case, the word “Commission”;
- and
- (b) by striking out subsections (7), (8), (9), (10) and (11), and inserting in lieu thereof the following subsections:—
- (7) A person may apply in the prescribed form to the Commission for the reservation of a name set out in the application as—

- (a) the name of an intended company;
- (b) the name to which a company proposes to change its name;
- (c) the name of an intended foreign company which is proposed to be registered;

or

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

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

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

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

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

Amendment of  
principal Act,  
s. 23—  
Change of  
name.

**19. Section 23 of the principal Act is amended—**

- (a) by striking out from subsection (1) the word “Registrar” and inserting in lieu thereof the word “Commission”;
- (b) by striking out from subsection (2) the word “Registrar” wherever it occurs and inserting in lieu thereof, in each case, the word “Commission”;
- (c) by striking out from subsection (3) the word “Registrar” and inserting in lieu thereof the word “Commission”;

and

(d) by striking out from subsection (3) the passage “exercise his power” and inserting in lieu thereof the passage “exercise its power”.

**20. Section 24 of the principal Act is amended—**

(a) by striking out from subsection (2) the word “Registrar” and inserting in lieu thereof the word “Commission”;

and

(b) by striking out subsections (4) and (5) and inserting in lieu thereof the following subsections:—

Amendment of principal Act, s. 24—  
Omission of word “Limited” in certain cases.

(4) A company in respect of which a licence under this section or under a corresponding previous enactment is in force is exempt from complying with the provisions of this Act relating to the use of the word “Limited” as part of its name.

(5) The Minister may, in a licence issued to a company under this section or by notice in writing served on a company in respect of which a licence under this section or under a corresponding previous enactment is in force, exempt the company from complying with such of the the provisions of this Act as are specified in the licence or notice relating to the lodging of annual returns and of returns of particulars of directors, managers and secretaries and publication of accounts.

(6) Where, immediately before the commencement of the Companies Act Amendment Act, 1979, a company in respect of which a licence under this section or a corresponding previous enactment was in force was exempt from the provisions of this Act relating to the lodging of annual returns and of returns of particulars of directors, managers and secretaries, the company shall, subject to subsection (7) of this section, continue to be exempt from those provisions.

(7) The Minister may by notice in writing served on the company revoke any exemption held by a company or a company included in a class of companies from the provisions of this Act relating to the lodging of annual returns and of returns of particulars of directors, managers and secretaries.

(8) A licence under this section or under any corresponding previous enactment may at any time be revoked by the Minister and upon revocation the Commission shall enter the word “Limited” at the end of the name of the company upon the register, and the company shall thereupon cease to enjoy the exemptions and privileges granted by reason of the licence by this Act but before a licence is so revoked the Minister shall give to the company notice in writing of his intention and shall afford it an opportunity to be heard.

(9) Where a licence issued under this section or under a corresponding previous enactment is revoked, a provision of the memorandum of a company that was inserted in compliance with a condition upon which the licence was issued may be altered in the same manner as an alteration of the provisions of that memorandum with respect to the objects of the company may be made, and section 28 of this Act applies to a proposal for such an alteration accordingly.

Amendment of  
principal Act,  
s. 25—  
Change of  
status of a  
company.

**21. Section 25 of the principal Act is amended—**

- (a) by striking out from subsection (2) the word “Registrar” wherever it occurs and inserting in lieu thereof, in each case, the word “Commission”;
- and
- (b) by striking out from subsection (3) the word “Registrar” and inserting in lieu thereof the word “Commission”.

Amendment of  
principal Act,  
s. 26—  
Change to  
proprietary  
company.

**22. Section 26 of the principal Act is amended—**

- (a) by striking out from subsection (1) the word “Registrar” and inserting in lieu thereof the word “Commission”;
- (b) by striking out from subsection (1) the passage “or a private company”;
- (c) by striking out from subsection (2) the word “Registrar” and inserting in lieu thereof the word “Commission”;
- (d) by striking out from subsection (2) the passage “or a private company”;
- (e) by striking out from subsection (3) the word “Registrar” and inserting in lieu thereof the word “Commission”;
- and
- (f) by striking out subsection (5).

Amendment of  
principal Act,  
s. 27—  
Default in  
complying with  
requirements  
as to  
proprietary  
and private  
companies.

**23. Section 27 of the principal Act is amended—**

- (a) by striking out the word “Registrar” wherever it occurs and inserting in lieu thereof, in each case, the word “Commission”;
- (b) by striking out subsection (1) and inserting in lieu thereof the following subsection:—

(1) Where, on the application of the Commission with respect to a proprietary company or of any member or creditor of a proprietary company, the Court is satisfied that default has been made in relation to the company in complying with a prohibition of a kind specified in paragraph (c) or (d) of subsection (1) of section 15 of this Act that is included, or is deemed to be included, in the memorandum or articles of the company the Court may by order determine that, on such date as the Court specifies in its order, the company ceased to be a proprietary company.;

- (c) by striking out paragraph (e) from subsection (2);
- (d) by striking out the passage “or a private company” wherever it occurs;
- (e) by striking out from subsection (2) the passage “or a private company as the case may be”;
- (f) by striking out from paragraph (b) of subsection (3) the passage “if the Court or Registrar determines that it has ceased to be a proprietary company”;
- and

- (g) by striking out from subsection (8) the passage “or where default is made in relation to a private company in complying with a prohibition of a kind specified in paragraph (a) of subsection (1) of section 38 of the repealed Act that is included in the memorandum or articles of the company”.

24. Section 28 of the principal Act is amended by striking out from subsection (9) the word “Registrar” wherever it occurs and inserting in lieu thereof, in each case, the word “Commission”.

Amendment of principal Act, s. 28—  
Alteration of objects in memorandum.

25. Section 28a of the principal Act is amended by striking out the word “Registrar” wherever it occurs and inserting in lieu thereof, in each case, the word “Commission”.

Amendment of principal Act, s. 28a—  
Alteration of constitution of company constituted by deed of settlement or other instrument.

26. Section 29 of the principal Act is amended by striking out from subsection (5) the word “Registrar” and inserting in lieu thereof the word “Commission”.

Amendment of principal Act, s. 29—  
Articles of association.

27. Section 34 of the principal Act is amended by striking out from subsection (3) the word “Registrar” and inserting in lieu thereof the word “Commission”.

Amendment of principal Act, s. 34—  
Copies of memorandum and articles.

28. Section 36 of the principal Act is amended—

- (a) by striking out the passage “or a private company” wherever it occurs;  
and  
(b) by striking out the passage “or private company”.

Amendment of principal Act, s. 36—  
Prohibition of carrying on business with fewer than statutory minimum of members.

29. Section 37 of the principal Act is amended—

- (a) by striking out from subsection (1) the passage “or proposed corporation”;  
and  
(b) by striking out from subsection (1) the word “Registrar” and inserting in lieu thereof the word “Commission”.

Amendment of principal Act, s. 37—  
Requirement to issue form of application for shares or debentures with a prospectus.

30. Section 38 of the principal Act is amended—

- (a) by striking out from subsection (1) the passage “or proposed corporation”;  
(b) by striking out from paragraph (a) of subsection (1) the word “Registrar” and inserting in lieu thereof the word “Commission”;  
and

Amendment of principal Act, s. 38—  
Invitations to lend money to, or deposit money with, a corporation.

(c) by striking out subsections (7), (8), (9), (10), (11) and (12) and inserting in lieu thereof the following subsections:—

(7) In subsection (6) of this section, “prescribed corporation” means—

(a) a banking corporation;

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

or

(c) a corporation that—

(i) is a pastoral company in respect of which an exemption granted under section 11 of the *Banking Act* 1959 of the Commonwealth, or that Act as amended from time to time, is in force;

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

or

(iii) is a subsidiary of a banking corporation or of a pastoral company referred to in subparagraph (i) of this paragraph if the repayment of all existing and future deposits with and loans to the subsidiary are guaranteed by the banking corporation or pastoral company,

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

(8) The Minister may, by notice in the *Gazette*, vary or revoke a declaration made under paragraph (b) of subsection (7) of this section.

(9) The Commission may, by notice in the *Gazette*—

(a) specify terms and conditions subject to which subsection (6) of this section shall have effect in relation to a corporation specified in paragraph (c) of subsection (7) of this section;

or

(b) vary or revoke any declaration or specification made under paragraph (c) of subsection (7) of this section or this subsection.

(10) Every corporation or other person that contravenes or fails to comply with any of the provisions of this section and every officer of a corporation who is in default shall be guilty of an offence against this Act.

Penalty: Imprisonment for six months or two thousand dollars.

(11) The provisions of this section relating to the description of any document acknowledging or evidencing or intended to acknowledge or evidence the indebtedness of a corporation shall apply to and in relation to every such document issued after the commencement of the Companies Act Amendment Act, 1964, notwithstanding anything in any debenture or trust deed issued or executed before that commencement and for the time being in force and any such document issued after that commencement shall be described in accordance with the requirements of this section notwithstanding anything in any such debenture or trust deed.

(12) For the purposes of this section a document issued by a borrowing corporation certifying that a person named therein is in respect of any deposit with or loan to the corporation the registered holder of a specified number or value—

- (a) of unsecured notes or unsecured deposit notes;
- (b) of mortgage debentures or certificates of mortgage debenture stock;

or

- (c) of debentures or certificates of debenture stock,

issued by the corporation upon or subject to the terms and conditions contained in a trust deed referred to or identified in the certificate, shall be deemed to be a document evidencing the indebtedness of that corporation in respect of that deposit or loan.

(13) The prospectus and a document issued in connection with or in relation to the prospectus shall describe or refer to the document mentioned in subsection (12) of this section in the manner required or authorized by the Commission and shall so describe or refer to the document without any addition to or qualification of the description or reference other than any addition that the Commission may approve or require in order to indicate the priority of the indebtedness that the document is to evidence.

31. Section 39 of the principal Act is amended—

- (a) by striking out from paragraph (a) of subsection (1) the word “Registrar” and inserting in lieu thereof the word “Commission”;
- (b) by striking out from paragraph (c) of subsection (1) the word “Registrar” wherever it occurs and inserting in lieu thereof, in each case, the word “Commission”;

and

- (c) by striking out from paragraph (h) of subsection (1) the passage “a copy of the consent verified as prescribed has been lodged with the Registrar” and inserting in lieu thereof the passage “a copy verified as prescribed of the consent has been lodged with the Commission”.

Amendment of  
principal Act,  
s. 39—  
Contents of  
prospectuses.

Repeal of  
s. 40 of  
principal Act,  
and enactment  
of sections in  
its place.

Certain notices,  
etc., not to be  
published.

32. Section 40 of the principal Act is repealed and the following sections are enacted and inserted in its place:—

40. (1) In this section—

“notice” includes a circular and an advertisement but does not include a registered prospectus or a report, statement, notice, circular or advertisement the publication of which is permitted under section 40a of this Act:

“publish” includes issue, circulate, disseminate and distribute:

“statement” includes matter that is not writing but by reason of the form or context in which it appears conveys a message.

(2) A reference in this section to the publishing of a notice is a reference to the publishing in the State of the notice by any means, including the publishing in a newspaper or periodical, by broadcasting or televising or in a film.

(3) Subject to subsection (4) of this section, a person shall not publish a notice that—

(a) offers to the public for subscription or purchase shares in, or debentures of, a corporation;

(b) invites the public to subscribe for or purchase shares in, or debentures of, a corporation;

or

(c) refers or calls attention, whether directly or indirectly, to—

(i) a prospectus;

(ii) an offer or intended offer to the public for subscription or purchase of shares in, or debentures of, a corporation;

(iii) an invitation or intended invitation to the public to subscribe for or purchase shares in, or debentures of, a corporation;

or

(iv) another notice that refers or calls attention, whether directly or indirectly, to a prospectus or such an offer, intended offer, invitation or intended invitation, not being a notice referred to in subsection (4) of this section.

(4) Subsection (3) of this section does not apply to or with respect to the publishing of a notice that refers to a registered prospectus and—

(a) states that allotments of or contracts for the subscription for or purchase of shares or debentures to which the prospectus relates will be made only on receipt of a form of application referred to in and attached to a copy of the prospectus but contains no other statements other than statements as to any or all of the following:—

(i) particulars of the shares in or debentures of the corporation to which the prospectus relates;

- (ii) the name of the corporation, the date of its incorporation and the amount of its paid-up capital;
  - (iii) the general nature of the main business of the corporation;
  - (iv) the names, addresses and occupations of the directors of the corporation;
  - (v) the name and address of each broker and underwriter to the issue and the name of the stock exchange of which each broker or underwriter is a member;
  - (vi) where the prospectus relates to debentures, the name and address of the trustee for the debenture holders;
  - (vii) the time and place at which copies of the prospectus and forms of applications for the shares or debentures to which it relates may be obtained;
  - (viii) the period during which the invitation contained in the prospectus is open;
- (b) is published by the holder of a dealers licence or an investment advisers licence, within the meaning of the Securities Industry Act, 1979, but contains no other statements other than statements as to any or all of the matters referred to in paragraph (a) of this section and a statement as to—
- (i) whether or not the person publishing the notice recommends acceptance of the invitation to which the prospectus relates;
- and
- (ii) the interest (if any) that the person publishing the notice has in the success of the invitation to which the prospectus relates being an interest the person has as underwriter or sub-underwriter to the issue of the shares or debentures to which the prospectus relates or an interest within the meaning of section 5 of the Securities Industry Act, 1979, in those shares or debentures;

or

- (c) is published by the holder of a dealers licence or an investment advisers licence within the meaning of the Securities Industry Act, 1979, and is accompanied by a copy of the prospectus.

(5) The inclusion in a notice of a statement required by this or any other Act or law to be included in the notice does not affect the operation of subsection (4) of this section.

(6) A person shall not contravene, or authorize or permit an act that constitutes a contravention of, this section.

Penalty: Two thousand dollars.

(7) Where a notice relating to a corporation is published in contravention of this section by or with the authority or permission of an officer of the corporation, the corporation is guilty of an offence under this Act.

Penalty: Two thousand dollars.

Certain reports referring to prospectuses not to be published.

40a. (1) In this section, unless the contrary intention appears—  
“publish” has the same meaning as in section 40 of this Act:

“report” includes a statement, notice, circular and an advertisement, whether or not in writing but does not include a notice, circular or advertisement the publication of which is permitted under section 40 of this Act.

(2) A reference in this section to the publishing of a report is a reference to the publishing in the State of the report by any means, including the publishing in a newspaper or periodical by broadcasting or televising or in a film.

(3) Subject to subsection (4) of this section, a person who is aware that a prospectus relating to an issue of shares or debentures—

(a) is in course of preparation by or on behalf of a corporation, for registration in a State or in a Territory of the Commonwealth;

or

(b) has been issued by or on behalf of a corporation,

shall not publish a report that is reasonably likely to induce persons to apply for those shares or debentures.

(4) Subsection (3) of this section does not apply to or with respect to the publishing of a report that—

(a) relates to the affairs of a corporation listed on a prescribed stock exchange and—

(i) is published only to that stock exchange or an officer of that stock exchange on behalf of the corporation or by or on behalf of one or more of the directors of the corporation;

or

(ii) has been so published;

(b) is a report of the whole or part of the proceedings at a general meeting of a corporation listed on a prescribed stock exchange and contains no other matter other than matters laid before that meeting;

(c) relates to a corporation and is published by or on behalf of a corporation or by or on behalf of one or more of the directors of the corporation and—

(i) does not contain matter that materially affects the affairs of the corporation other than matter previously made available in a registered prospectus, annual report or a report referred to in paragraph (a) or (b) of this subsection;

(ii) does not contain a reference, whether directly or indirectly, to an invitation to the public to subscribe for or purchase shares or debentures that when the report is published, is open or is intended to be made, not being a reference to the principal business of the corporation in a case where the principal business of the corporation is the borrowing of money and the provision of finance;

and

(iii) is not accompanied by a registered prospectus or a notice described in subsection (3) of section 40 of this Act and the corporation and its directors have taken all reasonable steps to ensure that the report is not published in a form or manner in which it might be associated with a notice described in that subsection;

(d) is published on behalf of a corporation by or on behalf of the directors of a corporation with the consent of the Commission;

(e) is news report (whether or not with comment) or is *bona fide* comment published in a newspaper or periodical or by broadcasting or televising by a person whether or not together with comment on the report, relating to—

(i) a registered prospectus or information contained in a registered prospectus;

or

(ii) a report referred to in paragraph (a), (b), (c) or (d) of this subsection;

if none of the following:—

(iii) that person;

(iv) an agent or employee of that person;

(v) where the report or comment is published in a newspaper or periodical, the publisher of the newspaper or periodical;

or

(vi) where the report or comment is published by broadcasting or televising, the licensee of the broadcasting or television station by which it is published,

receives or is entitled to receive any consideration or other benefit from a person who has an interest in the success of the issue of shares or debentures to which the report or comment relates as an inducement for or as the result of the publication of the report or comment;

(f) is not published by a person—

- (i) by or on behalf of a corporation to which the report relates or whether directly or indirectly at the instigation of or by arrangement with the corporation or the directors of the corporation;
- (ii) by or on behalf of the directors or promoters of a proposed corporation to which the report relates;

or

- (iii) by or on behalf of a person who has an interest in the success of the issue of shares or debentures to which the report relates,

and the firstmentioned person does not receive and is not entitled to receive any consideration or other benefit from the corporation or any of the directors of the corporation, or any of the directors or promoters of the proposed corporation, or from a person mentioned in subparagraph (iii) of this paragraph as an inducement for or as the result of the publication of the report;

or

- (g) contains only matter that is prescribed matter for the purpose of this subsection or that relates only to a corporation that is, or is included in a class that is, prescribed for the purposes of this subsection.

(5) A person shall not contravene, or authorize or permit an act that constitutes a contravention of, this section.

Penalty: Two thousand dollars.

(6) Where a report relating to a corporation is published in contravention of this section by or with the authority or permission of an officer of the corporation, the corporation is guilty of an offence under this Act.

Penalty: Two thousand dollars.

40b. (1) In this section—

“notice” means a notice within the meaning of section 40 of this Act or a report within the meaning of section 40a of this Act:

“publish” has the same meaning as in section 40 of this Act.

(2) A person who publishes a notice relating to a corporation after he has received a certificate that—

- (a) specifies the names of two persons purporting to be directors of the corporation and is signed by those persons;

and

- (b) is to the effect that, by reason of subsection (4) of section 40, or subsection (4) of section 40a, of this Act, section 40, or section 40a, of this Act, as the case may be, does not apply to the notice,

is not guilty of an offence under section 40 or 40a of this Act, as the case may be.

(3) Where a notice to which a certificate under subsection (2) of this section relates is published, each director who signed that certificate shall, for the purposes of sections 40 and 40a of this Act be deemed to have published the notice.

(4) A person who publishes a notice to which a certificate under subsection (2) of this section relates shall, if the Commission requires him to do so, forthwith deliver the certificate to the Commission.

Penalty: One thousand dollars.

(5) In proceedings for an offence under section 40 or 40a of this Act a certificate relating to a notice that purports to be a certificate under this section is *prima facie* evidence that—

- (a) when the certificate was issued, the persons named as such in the certificate were directors of the corporation;
  - (b) the signatures in the certificate purporting to be the signatures of the directors are those signatures;
- and
- (c) the publication of the notice was authorized by those directors.

(6) Nothing in section 40 or section 40a of this Act or this section limits or diminishes the liability that a person may incur, otherwise than under section 40 or section 40a of this Act or this section, under any rule of law or under any other enactment.

33. Section 42 of the principal Act is amended—

- (a) by striking out from subsection (1) the word “Registrar” and inserting in lieu thereof the word “Commission”;
- (b) by striking out subsections (2) and (2a) and inserting in lieu thereof the following subsections:—

(2) The Commission shall not register a copy of any prospectus unless—

- (a) the copy signed by every director and by every person who is named therein as a proposed director of the corporation or by his agent authorized in writing is lodged with the Commission on or before the date of its issue;
- (b) the prospectus appears to comply with the requirements of this Act;
- (c) there are also lodged with the Commission copies verified as prescribed of any consents required by section 45 of this Act to the issue of the prospectus and of all material contracts referred to in the prospectus or, in the case of such a contract not reduced into writing, a memorandum giving full particulars thereof verified as prescribed;
- (d) the Commission is of the opinion that the prospectus does not contain any statement or matter which is misleading in the form or context in which it is included;

and

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

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

(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 any such liability, the prospectus also gives full particulars of the nature and extent of that liability, of the circumstance under which that liability arose and the manner in which that liability is to be discharged.

(2a) Nothing in paragraphs (b) and (d) of subsection (2) of this section prevents the Commission from registering a copy of a prospectus in respect of a foreign company incorporated in another State or Territory of the Commonwealth if the Commission is satisfied that—

(a) the prospectus has been registered or is acceptable for registration under a law corresponding to this section in that other State or Territory;

and

(b) the prospectus complies with such of the requirements of paragraph (i) of subsection (1) of section 39 of this Act as apply to a prospectus issued by that foreign company.

Amendment of principal Act, s. 46—  
Civil liability for misstatements in prospectus.

34. Section 46 of the principal Act is amended by striking out from paragraph (a) and paragraph (b) of subsection (5) the word "Registrar" wherever it occurs and inserting in lieu thereof, in each case, the word "Commission".

Repeal of s. 50 of principal Act and enactment of section in its place.

35. Section 50 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Restriction on allotment in certain cases.

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

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

Penalty: One thousand dollars.

**36.** Section 51 of the principal Act is amended by striking out subsection (2) and inserting in lieu thereof the following subsection:—

Amendment of principal Act, s. 51—  
Requirements as to statements in lieu of prospectus.

(2) The Commission shall not accept for registration any statement in lieu of prospectus unless it appears to the Commission to comply with the requirements of this Act.

**37.** Section 52 of the principal Act is amended—

Amendment of principal Act, s. 52—  
Restrictions on commencement of business without issue of prospectus or statement in lieu thereof.

(a) by striking out from subparagraph (iii) of paragraph (b) of subsection (1) the word “Registrar” and inserting in lieu thereof the word “Commission”;

(b) by striking out from paragraphs (a) and (c) of subsection (2) the word “Registrar” wherever it occurs and inserting in lieu thereof, in each case, the word “Commission”;

and

(c) by striking out from subsection (3) the word “Registrar” and inserting in lieu thereof the word “Commission”.

**38.** Section 54 of the principal Act is amended—

Amendment of principal Act, s. 54—  
Return as to allotments.

(a) by striking out from subsection (1) the word “Registrar” and inserting in lieu thereof the word “Commission”;

(b) by striking out from subsection (4) the word “Registrar” wherever it occurs and inserting in lieu thereof, in each case, the word “Commission”;

(c) by inserting in paragraph (c) of subsection (5) after the passage “in paying up” the passage “or partly paying up”;

(d) by striking out subsection (6) and inserting in lieu thereof the following subsection:—

(6) For the purposes of this section any shares which the subscribers to the memorandum have agreed in the memorandum to take shall be deemed to have been allotted to such subscribers on the date of the incorporation of the company.;

and

(e) by striking out subsection (8).

**39.** Section 57 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Repeal of s. 57 of principal Act and enactment of section in its place.

57. A company shall not issue any share warrant.

Share warrants.

**40.** Section 58 of the principal Act is amended—

Amendment of principal Act, s. 58—  
Power to pay certain commissions and prohibition of payment of all other commissions, discounts, etc.

(a) by striking out from subparagraph (ii) of paragraph (c) of subsection (1) the word “Registrar” and inserting in lieu thereof the word “Commission”;

(b) by striking out from subsection (3) the word "Registrar" and inserting in lieu thereof the word "Commission";

and

(c) by striking out from subsection (5) the word "Registrar" and inserting in lieu thereof the word "Commission".

Amendment of  
principal Act,  
s. 60—  
Issue of  
shares at a  
premium.

41. Section 60 of the principal Act is amended by striking out subsection (3).

Amendment of  
principal Act,  
s. 61—  
Redeemable  
preference  
shares.

42. Section 61 of the principal Act is amended—

(a) by striking out subsection (6);

and

(b) by striking out from subsection (8) the word "Registrar" and inserting in lieu thereof the word "Commission".

Amendment of  
principal Act,  
s. 62—  
Power of  
company to  
alter its share  
capital.

43. Section 62 of the principal Act is amended by striking out subsection (4) and inserting in lieu thereof the following subsection:—

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

Amendment of  
principal Act,  
s. 63—  
Validation of  
shares  
improperly  
issued.

44. Section 63 of the principal Act is amended by striking out the word "Registrar" and inserting in lieu thereof the word "Commission".

Amendment of  
principal Act,  
s. 64—  
Special  
resolution for  
reduction of  
share capital.

45. Section 64 of the principal Act is amended—

(a) by striking out from paragraph (b) of subsection (2) the passage "on affidavit";

(b) by striking out subsection (4) and inserting in lieu thereof the following subsection:—

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

(c) by striking out subsection (6) and inserting in lieu thereof the following subsection:—

(6) Upon the registration by the Commission of an office copy of the order, the resolution for reducing share capital as confirmed by the order shall take effect.;

(d) by striking out subsections (7) and (8) and inserting in lieu thereof the following subsections:—

(7) The certificate of the Commission shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with and that the share capital of the company is such as is stated in the order.

(8) On the registration of the copy of the order the particulars shown in the order pursuant to subsection (5) of this section shall be deemed to be substituted for the corresponding particulars in the memorandum and such substitution shall be deemed to be an alteration of the memorandum for the purposes of this Act.;

(e) by striking out from paragraph (a) of subsection (9) the passage “the lodging” and inserting in lieu thereof the passage “the registration”;

and

(f) by striking out subsections (12) and (13) and inserting in lieu thereof the following subsections:—

(12) A grant made before the date on which this subsection comes into operation by a company to a member of the company of the right to occupy or use any land, building or part of a building owned or held under lease by the company, whether for consideration or not and whether by virtue of his being a member of the company or not, shall be deemed not to have been a reduction of the share capital of the company.

(13) A grant made after that date by a company to a member of the company of a right referred to in subsection (12) shall not constitute a reduction of the share capital of the company if it is made in pursuance of a provision of the memorandum or articles of the company under which a member of the company by virtue of his being such a member, may be granted such a right whether or not the provision provides for consideration to be given for the grant.

46. The following section is enacted and inserted in the principal Act after section 64 thereof:—

Enactment of  
s. 64a of  
principal Act.

64a. (1) Where shares in a company which were formerly not divided into classes are so divided or where shares of one class are converted into shares of another class, the company shall within one month after the division or conversion lodge with the Commission a return in the prescribed form showing particulars of the division or conversion.

Division or  
conversion of  
shares into  
classes.

(2) In the event of default in complying with subsection (1) of this section, the company, and each officer of the company who is in default, is guilty of an offence against this Act.

Penalty: One hundred dollars. Default penalty.

47. Section 65 of the principal Act is amended by striking out subsections (4) and (5) and inserting in lieu thereof the following subsections:—

Amendment of  
principal Act,  
s. 65—

(4) On the application the Court, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested may, if satisfied having regard to all the circum-

Rights of  
holders of  
classes of  
shares.

stances of the case that the variation or abrogation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation or abrogation as the case may be and shall, if not so satisfied, confirm it.

(4a) An appeal shall not lie to the Full Court from a decision of the Court under subsection (4) of this section, except by leave of the Full Court.

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

Penalty: Two hundred dollars. Default penalty.

Amendment of  
principal Act,  
s. 67—  
Dealing by  
company in  
its own  
shares, etc.

**48.** Section 67 of the principal Act is amended by inserting after subsection (1) the following subsection:—

(1a) Where the purpose, or one of the purposes, of a contract is to enable or assist a company in giving financial assistance to any person in contravention of subsection (1) of this section a party to the contract who did not know of and had no reason to suspect that purpose may enforce the contract against all other parties to it.

Amendment of  
principal Act,  
s. 69a—  
Application  
and  
interpretation  
of Division.

**49.** Section 69a of the principal Act is amended—

(a) by striking out the word “Governor” wherever it occurs in subsections (2) and (3) and inserting in lieu thereof, in each case, the word “Minister”;

and

(b) by striking out subsection (4) and inserting in lieu thereof the following subsection:—

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

Amendment of  
principal Act,  
s. 69b—  
Persons obliged  
to comply with  
Division.

**50.** Section 69b of the principal Act is amended by striking out the word “corporate” and inserting in lieu thereof the passage “corporate or unincorporate”.

Amendment of  
principal Act,  
s. 69c—  
Substantial  
shareholdings  
and  
substantial  
shareholders.

**51.** Section 69c of the principal Act is amended by striking out from subsections (1) and (2) the passage “an interest or interests” and inserting in lieu thereof, in each case, the passage “a relevant interest or relevant interests”.

Amendment of  
principal Act,  
s. 69d—  
Substantial  
shareholder to  
notify company  
of relevant  
interests.

**52.** Section 69d of the principal Act is amended—

(a) by striking out from subsection (1) the passage “an interest or interests” and inserting in lieu thereof the passage “a relevant interest or relevant interests”;

and

(b) by striking out subsections (2) and (3) and inserting in lieu thereof the following subsections:—

(2) A person required to give a notice under subsection (1) of this section shall give the notice within fourteen days after that person became or becomes aware of the relevant interest or interests by virtue of which he is 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 the period referred to in subsection (2) of this section.

53. Section 69e of the principal Act is repealed and the following section is enacted and inserted in its place:—

Repeal of s. 69e of principal Act and enactment of section in its place.

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

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

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

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

54. Section 69f of the principal Act is amended by striking out subsection (2) and inserting in lieu thereof the following subsection:—

Amendment of principal Act, s. 69f—

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

Person who ceases to be substantial shareholder to notify company.

55. Section 69g of the principal Act is amended by striking out from paragraphs (a) and (b) the passage “an interest” and inserting in lieu thereof, in each case, the passage “a relevant interest”.

Amendment of principal Act, s. 69g—  
References to operation of section 6a.

56. Section 69h of the principal Act is repealed.

Repeal of s. 69h of principal Act.

57. Section 69j of the principal Act is amended—

(a) by striking out the word “Registrar” and inserting in lieu thereof the word “Commission”;  
and

Amendment of principal Act, s. 69j—  
Commission may extend time for giving notice under this Division.

- (b) by striking out the passage “in his discretion” and inserting in lieu thereof the passage “in its discretion”.

Amendment of principal Act, s. 69k—  
Company to keep register of substantial shareholders.

**58.** Section 69k of the principal Act is amended—

- (a) by striking out from subsection (3) the word “Registrar” and inserting in lieu thereof the word “Commission”;

and

- (b) by striking out from subsection (4) the passage “The Registrar may at any time in writing require the company to furnish him” and inserting in lieu thereof the passage “The Commission may at any time in writing require the company to furnish it”.

Repeal of s. 69m of principal Act and enactment of section in its place.

**59.** Section 69m of the principal Act is repealed and the following section is enacted and inserted in its place:—

Knowledge of servant or agent imputed to master or principal.

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

Amendment of principal Act, s. 69n—  
Powers of court with respect to defaulting substantial shareholders.

**60.** Section 69n of the principal Act is amended—

- (a) by striking out from paragraphs (c), (d), (e) and (g) of subsection (1) the passage “an interest” wherever it occurs and inserting in lieu thereof, in each case, the passage “a relevant interest”;

- (b) by striking out from subsection (4) the word “Registrar” and inserting in lieu thereof the word “Commission”;

- (c) by striking out paragraphs (a) and (b) of subsection (6) and inserting in lieu thereof the following paragraphs:—

(a) that the failure of the substantial shareholder to comply as mentioned in subsection (1) of this section was due to his inadvertence or mistake or to his not being aware of a relevant fact or occurrence;

and

(b) that, in all the circumstances, the failure ought to be excused.;

- (d) by striking out subsection (9) and inserting in lieu thereof the following subsection:—

(9) Section 311 of this Act applies in relation to a share that vests in the Commission under this section as section 311 applies in relation to an estate or interest in property referred to in section 311.;

and

- (e) by striking out subsection (11) and inserting in lieu thereof the following subsections:—

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

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

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

**61. Section 70 of the principal Act is amended—**

(a) by striking out from subsection (2) the word “Registrar” wherever it occurs and inserting in lieu thereof, in each case, the word “Commission”;

and

(b) by striking out subsection (8).

Amendment of principal Act, s. 70—  
Register of debenture holders and copies of trust deed.

**62. Section 74 of the principal Act is amended—**

(a) by striking out from subsection (1) the passage “a person who is a registered liquidator or a corporation” and inserting in lieu thereof the passage “a corporation (in this section called “the trustee corporation”);”;

(b) by striking out from subsection (1a) all the words after the end of paragraph (c);

(c) by inserting after subsection (1a) the following subsection:—

(1b) Where the approval of a corporation has been revoked under subsection (1a) of this section, the borrowing corporation may appoint a trustee corporation qualified pursuant to this section in place of the trustee corporation which by reason of the revocation has ceased to be qualified.;

(d) by striking out from subsections (2) and (3) the passage “person or” wherever it occurs;

(e) by striking out from paragraph (a) of subsection (3) the passage “or an auditor”;

(f) by striking out from paragraph (e) of subsection (3) the passage “or director of a corporation”;

and

(g) by striking out from subsection (4) the passage “and hereinafter referred to as “the trustee corporation””.

Amendment of principal Act, s. 74—  
Qualification of trustee for debenture holders.

**63. Section 74a of the principal Act is amended—**

(a) by striking out from subsection (1) the passage “person or”;

(b) by striking out from subsection (3) the passage “person or”;

(c) by striking out subsection (5) and inserting in lieu thereof the following subsection:—

(5) Where the trustee for the holders of the debentures has ceased to exist or to be qualified under section 74 of this Act and in the case where a trustee for the holders of debentures

Amendment of principal Act, s. 74a—  
Retirement of trustees.

has not been appointed pursuant to subsection (1a) of that section or where the trustee for the holders of debentures fails or refuses to act or is disqualified under that section the Court may on the application of the borrowing corporation or the trustee for the holders of the debentures or the holder of any of the debentures or the Commission appoint any corporation qualified pursuant to section 74 of this Act to be the trustee for the holders of the debentures in place of the trustee which has ceased to exist or to be qualified or which has failed or refused to act as trustee or is disqualified as aforesaid.;

and

(d) by striking out from subsection (6) the word "Registrar" and inserting in lieu thereof the word "Commission".

Amendment of  
principal Act,  
s. 74b—  
Contents of  
trust deed.

64. Section 74b of the principal Act is amended by striking out subsection (3).

Amendment of  
principal Act,  
s. 74d—  
Duties of  
trustees.

65. Section 74d of the principal Act is amended—

(a) by striking out from paragraph (b) of subsection (1) the passage "himself or";

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

(c) shall ensure that the borrowing corporation and each of its guarantor corporations comply with the provisions of Division VII of this Part so far as they relate to debentures and are applicable;

(d) shall exercise reasonable diligence to ascertain whether or not the borrowing corporation and each of its guarantor corporations has committed any breach of the covenants, terms and provisions of the debentures or the trust deed;;

(c) by striking out from subsection (2) the word "Minister" wherever it occurs and inserting in lieu thereof, in each case, the word "Commission";

(d) by striking out from paragraph (b) of subsection (3) the word "Minister" and inserting in lieu thereof the word "Commission";

(e) by striking out from subsection (6) the word "Minister" and inserting in lieu thereof the word "Commission";

and

(f) by striking out subsection (7).

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

66. Section 74f of the principal Act is amended—

(a) by striking out from subsection (1) the word "Registrar" and inserting in lieu thereof the word "Commission";

(b) by striking out paragraphs (a) and (b) of subsection (2) and inserting in lieu thereof the following paragraphs:—

(a) whether or not the limitations on the amount that the corporation may borrow have been exceeded and, if they have been exceeded, particulars of borrowings exceeding those limitations;

- (b) whether or not the borrowing corporation and each of its guarantor corporations has observed and performed all the covenants and provisions binding upon them respectively by or pursuant to the debentures or any trust deed;;
- (c) by striking out from paragraph (d) of subsection (2) the passage “which are or should be known to the directors or the corporation”;
- (d) by striking out from paragraph (f) of subsection (2) the passage “particulars of” and inserting in lieu thereof the passage “particulars, with respect to each corporation that is so deemed, of”;
- (e) by inserting after subsection (2) the following subsection:—
- (2a) Where during the period to which a report referred to in subsection (1) of this section relates—
- (a) a corporation has become a guarantor corporation;
- (b) a guarantor corporation has ceased to be liable for the payment of the whole or part of the moneys for which it was liable under the guarantee;
- or
- (c) a guarantor corporation has changed its name,
- the report shall so state and shall give particulars of the matters so stated.;
- (f) by striking out paragraph (a) of subsection (4) and inserting in lieu thereof the following paragraph:—
- (a) the directors of every borrowing corporation which has issued debentures (other than debentures of a kind that if issued after the commencement of the Companies Act Amendment Act, 1964, could be lawfully described pursuant to section 38 of this Act as mortgage debentures or certificates of mortgage debenture stock) and of every guarantor corporation which has guaranteed the repayment of the moneys raised by the issue of those debentures shall—
- (i) at some date not later than seven months or in the case of a particular corporation not later than the expiration of such other period as is for the time being fixed by the Commission with the consent of the trustee for the debenture holders for that corporation, after the expiration of each financial year of the corporation cause to be made out and lodged with the Commission and with the trustee for the holders of the debentures (if any) a profit and loss account for that financial year and a balance-sheet as at the end of that financial year;
- and
- (ii) at some date not later than ten months, or in the case of a particular corporation, not later than the expiration of such other period as is for the

time being fixed by the Commission with the consent of the trustee for the debenture holders for that corporation, after the expiration of each financial year of the corporation cause to be made out and lodged with the Commission and with the trustee for the holders of the debentures (if any) a profit and loss account for the period from the end of that financial year until the expiration of six months after the end of that financial year and a balance-sheet as at the end of the period to which the profit and loss account relates.

Penalty: One hundred dollars. Default penalty.;

- (g) by striking out paragraph (b) of subsection (4);
- (h) by striking out from paragraph (d) of subsection (4) the word "Governor" and inserting in lieu thereof the word "Commission";
- (i) by striking out from paragraph (e) of subsection (4) the word "Governor" and inserting in lieu thereof the word "Commission";
- (j) by inserting after subsection (4) the following subsection:—

(4a) Subsections (1), (3) and (4) of this section do not apply in respect of a borrowing corporation or a guarantor corporation which is being wound up or in respect of which a receiver or receiver and manager has been appointed and has not ceased to act under that appointment;

and

- (k) by striking out subsections (5), (6) and (7) and inserting in lieu thereof the following subsections:—

(5) The provisions of section 162 of this Act (other than subsections (5) and (6), subsections (1), (2) and (3) of section 162a of this Act, section 162c of this Act, subsections (1), (2), (3), (4), (5), (6), (9) and (10) of section 167 of this Act and section 167c of this Act (other than any provision which requires the laying of accounts or group accounts within the meaning of those sections before an annual general meeting) shall with such adaptations as are necessary be applicable to every profit and loss account and balance-sheet made out and lodged pursuant to subsection (4) of this section as if that profit and loss account and balance-sheet were a profit and loss account and balance-sheet referred to in those sections but notwithstanding the foregoing provisions of this subsection where any guarantor corporation, being a corporation which is incorporated in the United Kingdom or in any State or Territory of the United States of America, has lodged with the Department of Trade and Industry in the United Kingdom or the Securities and Exchange Commission of the United States of America a profit and loss account and balance-sheet for the relevant period it shall be sufficient compliance with the requirements of subsection (4) of this section, if there is (with the consent of the trustee for the debenture holders) lodged with the Commission and the trustee for the debenture holders certified copies of the profit and loss account and balance-sheet so lodged.

(6) Where the directors of a borrowing corporation do not lodge with the trustee for the holders of debentures a report as required by subsection (1) of this section, or where the directors of a borrowing corporation or the directors of a guarantor corporation do not lodge with the trustee the balance-sheets, profit and loss accounts and reports as required by subsection (4) of this section within the time prescribed the trustee shall forthwith lodge notice of that fact with the Commission.

(7) Notwithstanding anything contained in this section, a profit and loss account and balance-sheet of a borrowing corporation or its guarantor corporation relating to a period of six months immediately following a financial year of the corporation required to be made out and lodged in accordance with subsection (4) of this section—

(a) need not be audited, or the audit thereof may be of a limited nature or extent, if the trustee for the holders of the debentures of the borrowing corporation has, by notice in writing, consented to the audit being dispensed with or being of a limited nature or extent, as the case may be;

(b) may, unless the trustee for the holders of the debentures of the borrowing corporation otherwise requires in writing, be based upon the value of the stock in trade of the borrowing corporation or the guarantor corporation, as the case may be, as reasonably estimated by the directors thereof on the basis of the values of such stock in trade as adopted for the purpose of the profit and loss account and balance-sheet of that corporation laid before the corporation at its last preceding annual general meeting and certified in writing by them as such.

(8) Where the trustee has, by notice in writing, so consented, the directors of the corporation in respect of whose profit and loss account and balance-sheet the notice was given, shall lodge with the Commission a copy of the notice at the time when the profit and loss account and balance-sheet to which the notice relates are lodged with the Commission.

67. Section 74h of the principal Act is amended by striking out from subsection (3) the word "Registrar" and inserting in lieu thereof the word "Commission".

Amendment of principal Act, s. 74h—  
Loans and deposits to be immediately repayable on certain events.

68. Section 76 of the principal Act is amended—

(a) by striking out from subsection (1) the definitions of "interest" and "investment contract" and inserting in lieu thereof the following definitions:—

Amendment of principal Act, s. 76—  
Interpretation.

"interest" means any right to participate, or interest, whether enforceable or not and whether actual prospective or contingent—

(a) in any profits, assets or realisation of any financial or business undertaking or scheme whether in the State or elsewhere;

(b) in any common enterprise whether in the State or elsewhere in which the holder of the right or interest is led to expect profits, rent or interest from the efforts of the promoter of the enterprise or a third party;

or

(c) in any investment contract,

whether or not the right or interest is evidenced by a formal document and whether or not the right or interest relates to a physical asset, but does not include—

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

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

(f) an interest in a partnership agreement, unless the agreement or proposed agreement—

(i) relates to an undertaking, scheme, enterprise or investment contract promoted by or on behalf of a person whose ordinary business is or includes the promotion of similar undertakings, schemes, enterprises or investment contracts, whether or not that person is, or is to become, a party to the agreement or proposed agreement;

or

(ii) is or would be an agreement, or is or would be within a class of agreements, prescribed by the regulations for the purposes of this paragraph;

or

(g) a prescribed right or interest or a right or interest of a prescribed class or kind declared by the regulations to be an exempt right or interest for the purposes of this Division:

“investment contract” means any contract scheme or arrangement which in substance and irrespective of the form thereof involves the investment of money in or under such circumstances that the investor acquires or may acquire an interest in or right in respect of property whether in the State or elsewhere which under or in accordance with the terms of investment will, or may at the option of the investor, be used or employed in common with any other interest in or right in respect of property whether in the State or elsewhere acquired in or under like circumstances;

and

(b) by inserting after subsection (1) the following subsection:—

(1a) A regulation made for the purposes of subparagraph (ii) of paragraph (f) of the definition of “interest” in subsection (1) of this section does not apply to an agreement or a class of agreements relating to a partnership—

(a) being a partnership for the carrying on of a profession or trade where a person carrying on that profession or trade is required by any Act to be registered, licensed or otherwise authorized in order to do so;

and

(b) the business of which does not include any business other than the business of a partnership referred to in paragraph (a) of this subsection.

69. Section 77 of the principal Act is amended by striking out from paragraph (a) the word “Registrar” and inserting in lieu thereof the word “Commission”.

Amendment of principal Act, s. 77—  
Approval of deeds.

70. Section 78 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “the Registrar may, subject to this section, grant his approval” and inserting in lieu thereof the passage “the Commission may, subject to this section, grant its approval”;

(b) by striking out from subsection (2) the passage “The Registrar shall not grant his approval” and inserting in lieu thereof the passage “The Commission shall not grant its approval”;

and

(c) by striking out from subsection (3) the word “Registrar” and inserting in lieu thereof the word “Commission”.

Amendment of principal Act, s. 78—  
Approval of deeds.

71. Section 80 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “A deed shall” and inserting in lieu thereof the passage “Subject to subsection (1a) of this section, a deed shall”;

(b) by inserting after subsection (1) the following subsections:—

(1a) The Minister may by notice published in the *Gazette* declare that, subject to such terms and conditions as are specified in the notice, a specified deed that makes provision for the appointment of a specified company as trustee for or representative of the holders of the interests to which the deed relates is not required to contain covenants to the effect of such of the matters referred to in subsection (1) of this section as are specified in the notice and the Minister may, by notice so published, revoke such a notice or vary it in such manner as he thinks fit.

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

(1b) Where before the commencement of the Companies Act Amendment Act, 1979, a notice was published under section 88 of this Act purporting to exempt a company, subject to such terms and conditions as were specified in the notice, from complying with the provisions of subsection (1) of this section in respect of a deed specified in the notice, the notice—

(a) shall, notwithstanding any provision of this Act, have effect and be deemed always to have had effect according to its tenor;

and

(b) may, notwithstanding any provision of this Act, be varied or revoked by the Minister by notice published in the *Gazette*;

and

(c) by striking out from paragraph (b) of subsection (2) the word “Registrar” and inserting in lieu thereof the word “Commission”.

Amendment of  
principal Act,  
s. 82—  
Statement to  
be issued.

72. Section 82 of the principal Act is amended—

(a) by striking out subsection (1) and inserting in lieu thereof the following subsection:—

(1) Before a company or an agent of a company issues or offers to the public for subscription or purchase or invites the public to subscribe for or purchase any interest the company shall issue or cause to be issued a statement in writing in connection therewith which statement shall for all purposes be deemed to be a prospectus issued by a company, and subject to subsection (2) of this section, all provisions of this Act and rules of law relating to prospectuses or to the offering or to an intended offering of shares for subscription or purchase to the public shall with such adaptations as are necessary apply and have effect accordingly and, without limiting the generality of the foregoing, apply and have effect as if—

(a) the interest were shares offered or intended to be offered to the public for subscription or purchase;

(b) persons accepting any offer or invitation in respect of or subscribing for or purchasing any such interest were subscribers for shares;

(c) a reference in paragraph (a) of subsection (4) of section 40 of this Act to “the corporation” were a reference to the financial or business undertaking or scheme, the common enterprise or the investment contract to which the statement relates;

(d) the reference in subparagraph (iv) of paragraph (a) of subsection (4) of section 40 of this Act to “the directors” were a reference to the management company for the interest and the directors thereof;

and

- (e) in subparagraph (vi) of paragraph (a) of subsection (4) of section 40 of this Act a reference to “debentures” were a reference to an interest and a reference to “the trustee for the debenture holders” were a reference to the trustee for, or representative of, the holders of the interests;
- (b) by striking out from subsection (2) the word “Registrar” and inserting in lieu thereof the word “Commission”;
- (c) by striking out from subsection (3) the word “Registrar” and inserting in lieu thereof the word “Commission”;
- and
- (d) by striking out from subsection (3) the passage “by writing under his hand” and inserting in lieu thereof the passage “by instrument in writing”.

73. Section 84 of the principal Act is amended—

Amendment of  
principal Act,  
s. 84—  
Register of  
interest  
holders.

- (a) by striking out from subsection (1) the passage “The management company” and inserting in lieu thereof the passage “Subject to subsection (4) of this section, the management company”;
- (b) by inserting after subsection (1) the following subsections:—
- (1a) A management company incorporated in a proclaimed State or Territory of the Commonwealth which—
- (a) keeps a register of holders of interests in accordance with the law of the proclaimed State or Territory, being a law that corresponds with the preceding provisions of this section;
- and
- (b) keeps within the State a register containing, with respect to the holders of interests who are resident within the State, the information prescribed by subsection (1) of this section,

shall be deemed to comply with subsection (1) of this section.

(1b) A management company that is to be deemed by subsection (1a) of this section to comply with subsection (1) of this section shall, within fourteen days after receiving a written request from a holder of an interest resident in the State, make available for inspection by him a copy of the register of holders of interests kept under the law of the proclaimed State or Territory.

Penalty: Two hundred dollars. Default penalty.;

and

- (c) by striking out subsections (2) and (3) and inserting in lieu thereof the following subsections:—
- (2) The provisions of Division IV of Part V (section 157 excepted) of this Act shall, with such adaptations and modifications as are necessary, apply to and in relation to the registers kept under subsection (1) of this section and under paragraph (b) of subsection (1a) of this section.

(3) A management company which—

(a) keeps a register of holders of interests pursuant to subsection (1) of this section or paragraph (b) of subsection (1a) of this section, at a place within five kilometres of the office of the Commission;

and

(b) provides reasonable accommodation and facilities for persons to inspect and take copies of its list of interest holders,

need not comply with the provision of paragraph (a) of subsection (1) of section 85 of this Act in relation to the deed under which the interests are held unless the Commission by order published in the *Gazette* otherwise directs.

(4) The Minister may by notice published in the *Gazette* declare that, subject to such terms and conditions as are specified in the notice, a specified management company is not required to comply with the provisions of subsection (1) of this section in respect of a deed specified in the notice.

Repeal of  
s. 85 of  
principal Act  
and enactment  
of section in  
its place.

74. Section 85 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Returns,  
information,  
etc., relating to  
interests.

85. (1) Where a deed is or has at any time been an approved deed under subsection (1) of section 77 of this Act, the management company shall, so long as the deed or any deed in substitution in whole or in part for the deed, remains in force lodge with the Commission within two months after the end of each financial year applicable to the deed a return in the prescribed form containing—

(a) a list of all persons who, at the end of the financial year, were holders of the interests to which the deed relates, showing the name and address of each holder and the extent of his holding and, if his interest consists of a specific interest in any property, a description of the property and its location sufficient to identify it;

(b) a summary of—

(i) all purchases and sales of land and marketable securities affecting the interests of the holders during the financial year;

and

(ii) all other investments affecting the interests of the holders made during the financial year, showing the descriptions and quantities of those investments;

(c) a statement of the total amount of brokerage affecting the interests of the holders paid or charged by the management company during the financial year and the proportion thereof paid to any stock or share broker, or any partner, employee or nominee of any stock or share broker, who is an officer of the company and the proportion retained by the company;

(d) a list of all parcels of land and marketable securities, and other investments, held by the trustee or representative in relation to the deed, as at the end of the financial year, showing the value of the land, securities or other investments and the basis of valuations;

and

(e) such other statements and particulars (if any) as may be prescribed.

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

(3) A company to which subsection (1) of this section applies shall, if so requested by any holder of an interest to which the deed relates within a period of one month after the end of the financial year, send by post or cause to be sent by post to the holder, within two months after the end of the financial year, a copy of the documents which the company is required to lodge with the Commission by virtue of paragraphs (b) to (e) (inclusive) of subsection (1) of this section.

75. Section 95 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Repeal of  
s. 95 of  
principal Act  
and enactment  
of section in  
its place.

95. (1) Notwithstanding anything in its articles or in a deed relating to debentures or interests a company shall not register a transfer of shares, debentures or interests unless a proper instrument of transfer has been delivered to the company, but this subsection shall not prejudice any power to register as a shareholder, debenture holder or interest holder any person to whom the right to any shares in, debentures of, or interests made available by, the company has been transmitted by operation of law.

Instrument of  
transfer.

(2) A transfer of shares, debentures or interests of a deceased holder made by his personal representative shall, although the personal representative is not himself registered as the holder of those shares, debentures or interests, be as valid as if he had been so registered at the time of the execution of the instrument of transfer.

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

(a) executes an instrument of transfer of a share, debenture or interest of the deceased holder to himself or to another person;

and

(b) delivers the instrument to the company, together with a statutory declaration made by him to the effect that, to the best of his knowledge, information and belief, no grant of representation of the estate of the deceased holder has been applied for or made in the State and no application for such a grant will be made, being a statutory declaration made within the period of one month immediately preceding the date of delivery of the statutory declaration to the company,

the company shall register the transfer and pay to the personal representative any dividends or other moneys accrued in respect of the share, debenture or interest up to the time of the execution of the instrument, but this subsection shall not operate so as to require the company to do any act or thing which it would not have been required to do if the personal representative were the personal representative of the deceased holder duly constituted under the law of the State.

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

(5) For the purposes of this section, an application by a personal representative of a deceased person for registration as the holder of a share, debenture or interest in place of the deceased person shall be deemed to be an instrument of transfer effecting a transfer of the share, debenture or interest to the personal representative.

(6) The production to a company of any document which is under the law of the State or under the law of any other State or Territory of the Commonwealth sufficient evidence of probate of the will, or letters of administration of the estate, of a deceased person having been granted to some person shall be accepted by the company, notwithstanding anything in its articles or in a deed relating to debentures or interests, as sufficient evidence of the grant.

(7) In this section "interest" includes an interest within the meaning of Division V of this Part.

**76.** Section 96 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Repeal of  
s. 96 of  
principal Act  
and enactment  
of section in  
its place.

Registrations  
of transfer at  
request of  
transferor.

96. (1) On the request in writing of the transferor of any share in, debenture of, or interest made available by, a company the company shall enter in the appropriate register the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

(2) On the request in writing of the transferor of a share in, debenture of, or interest made available by, the company, the company shall by notice in writing require the person having the possession, custody or control of the share certificate or debenture or any document evidencing title to the interest (as the case may be) and the instrument of transfer thereof or either of them to bring it or them into the office of the company within a stated period, being not less than seven and not more than twenty-eight days after the date of the notice, to have the share certificate debenture or document cancelled or rectified and the transfer registered or otherwise dealt with.

(3) If any person refuses or neglects to comply with a notice given under subsection (2) of this section the Court may, on application by the transferor, order that person to deliver up the documents mentioned in the notice to the company upon such terms or conditions as to the Court seems fit.

(4) Lists of share certificates, debentures and other documents called in under this section and not brought in shall be exhibited in the office of the company and shall be advertised in the *Gazette* and in such newspapers and at such times as the company thinks fit.

(5) In this section "interest" includes an interest within the meaning of Division V of this Part.

**77. Section 97 of the principal Act is amended—**

(a) by striking out from subsection (1) the passage "shares, debentures or other interests in the company" and inserting in lieu thereof the passage "shares in, debentures of, or interests made available by, the company";

and

(b) by inserting after subsection (1) the following subsection:—

(1a) In this section "interest" includes an interest within the meaning of Division V of this Part.

Amendment of principal Act, s. 97—  
Notice of refusal to register transfer.

**78. Section 98 of the principal Act is amended—**

(a) by striking out from subsection (1) the passage "shares, debentures or other interests in the company" and inserting in lieu thereof the passage "shares in, debentures of, or interests made available by, the company";

and

(b) by inserting after subsection (4) the following subsection:—

(5) In this section "interest" includes an interest within the meaning of Division V of this Part.

Amendment of principal Act, s. 98—  
Certification of transfers.

**79. Section 99 of the principal Act is repealed and the following section is enacted and inserted in its place:—**

99. (1) Every company shall within two months after the allotment of any shares in, the issue of debentures of, or the making available of interests by, the company and within one month after the date on which a transfer (other than such a transfer as the company is for any reason entitled to refuse to register and does not register) of any shares, debentures or interests is lodged with the company, complete and have ready for delivery all the appropriate certificates, debentures or other documents in connection with the allotment, issue, making available or transfer, unless in the case of shares the conditions of the issue otherwise provide and shall, unless otherwise instructed by the transferee, send or deliver the completed certificates, debentures or other documents to the transferee or, where the transferee has instructed the company in writing to send them to a nominated person to that person.

(2) If default is made in complying with this section the company and every officer of the company who is in default shall be guilty of an offence against this Act and liable, for each day during which the offence continues, to a penalty not exceeding one hundred dollars.

Repeal of s. 99 of principal Act and enactment of section in its place.

Duties of company with respect to issues of certificates.

(3) If any company on which a notice has been served requiring the company to make good any default in complying with the provisions of this section fails to make good the default within ten days after the service of the notice, the Court may, on the application of the person entitled to have the certificates, debentures or other documents delivered to him, make an order directing the company and any officer of the company to make good the default within such time as is specified in the order.

(4) In this section "interest" includes an interest within the meaning of Division V of this Part.

Amendment of principal Act, s. 100—  
Registration of charges.

**80.** Section 100 of the principal Act is amended—

(a) by striking out from subsection (1) the word "Registrar" and inserting in lieu thereof the word "Commission";

and

(b) by striking out from subsection (5) the word "Registrar" and inserting in lieu thereof the word "Commission".

Amendment of principal Act, s. 102—  
Duty of company to register charges existing on property acquired.

**81.** Section 102 of the principal Act is amended by striking out from subsection (1) the word "Registrar" and inserting in lieu thereof the word "Commission".

Amendment of principal Act, s. 103—  
Register of charges to be kept by the Commission.

**82.** Section 103 of the principal Act is amended—

(a) by striking out from subsection (1) the word "Registrar" and inserting in lieu thereof the word "Commission";

and

(b) by striking out from subsection (2) the word "Registrar" and inserting in lieu thereof the word "Commission".

Amendment of principal Act, s. 105—  
Entries of satisfaction and release of property from charge.

**83.** Section 105 of the principal Act is amended—

(a) by striking out from subsection (1) the word "Registrar" wherever it occurs and inserting in lieu thereof, in each case, the word "Commission";

and

(b) by striking out from subsection (2) the passage "such evidence as the Registrar may require to satisfy him" and inserting in lieu thereof the passage "evidence to satisfy the Commission".

Amendment of principal Act, s. 108—  
Documents made out of State.

**84.** Section 108 of the principal Act is amended by striking out the word "Registrar" wherever it occurs and inserting in lieu thereof, in each case, the word "Commission".

Repeal of s. 109 of principal Act.

**85.** Section 109 of the principal Act is repealed.

Amendment of principal Act, s. 111—  
Registered office of company.

**86.** Section 111 of the principal Act is amended by striking out subsection (1) and inserting in lieu thereof the following subsection:—

(1) A company shall, as from the day of its incorporation, have a registered office within the State to which all communications and notices may be addressed and which shall be open and accessible to the public—

(a) where a notice has been lodged by the company with the Commission under subsection (1a) of section 112 of this Act or under a corresponding previous enactment—for such hours (being not less than three) between the hours of nine o'clock in the morning and five o'clock in the evening each day, Saturdays, Sundays and holidays excepted, as are specified in the later of that notice or a notice lodged by the company with the Commission under subsection (1c) of section 112 of this Act or under a corresponding previous enactment;

or

(b) where a notice has not been lodged by the company with the Commission under subsection (1a) of section 112 of this Act or under a corresponding previous enactment—for not less than five hours between ten o'clock in the morning and four o'clock in the afternoon each day, Saturdays, Sundays and holidays excepted.

**87.** Section 112 of the principal Act is amended by striking out subsection (1) and inserting in lieu thereof the following subsections:—

Amendment of  
principal Act,  
s. 112—  
Office hours.

(1) On the lodging of the memorandum of a proposed company for registration notice in the prescribed form of the address of the proposed registered office of the company shall be lodged with the Commission.

(1a) On the lodging of the memorandum of a proposed company for registration or at any later time, notice in the prescribed form of the hours (being not less than three) between the hours of nine o'clock in the morning and five o'clock in the evening each day, Saturdays, Sundays and holidays excepted, during which the registered office of the company is to be open and accessible to the public may be lodged with the Commission.

(1b) Notice in the prescribed form of a change of address of the registered office of a company shall be lodged with the Commission not later than seven days after the day on which the change occurs.

(1c) Where a notice has been lodged by a company under subsection (1a) of this section or under a corresponding previous enactment, notice in the prescribed form of a change of the hours during which the registered office of the company is open and accessible to the public shall be lodged with the Commission not later than seven days after the day on which the change occurs.

**88.** Section 114 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Repeal of  
s. 114 of  
principal Act  
and enactment  
of section in  
its place.

114. (1) Every public company shall have at least three directors and every proprietary company shall have at least two directors.

Directors.

(2) In the case of a public company at least two directors shall be natural persons who ordinarily reside within the Commonwealth and in the case of a proprietary company at least one director shall be a natural person who ordinarily so resides.

(3) Where the articles of a company incorporated before the commencement of the Companies Act Amendment Act, 1979, provide for the appointment of one director only, the articles shall, after that commencement, be deemed to provide for the appointment of two directors.

(4) Non-compliance with this section shall not invalidate any act of or any transaction entered into by or on behalf of a company.

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

Penalty: Two hundred dollars.

Default penalty.

Amendment of principal Act, s. 115—  
Restriction on appointment or advertisement of director.

**89.** Section 115 of the principal Act is amended—

(a) by striking out from subsection (1) the word “Registrar” wherever it occurs and inserting in lieu thereof, in each case, the word “Commission”;

(b) by striking out from paragraph (c) of subsection (3) the word “Registrar” and inserting in lieu thereof the word “Commission”;  
and

(c) by striking out from subsection (4) the word “Registrar” and inserting in lieu thereof the word “Commission”.

Amendment of principal Act, s. 117—  
Undischarged bankrupts acting as directors.

**90.** Section 117 of the principal Act is amended—

(a) by striking out from subsection (2) the passage “the Minister who” and inserting in lieu thereof the passage “the Commission which”;  
and

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

(3) Service on the Commission of originating process in proceedings for leave under this section shall be sufficient service on it of notice of intention to apply therefor for the purposes of subsection (2) of this section.

Amendment of principal Act, s. 120—  
Removal of Directors.

**91.** Section 120 of the principal Act is amended by inserting after subsection (7) the following subsection:—

(8) A director of a public company shall not be removed by, or be required to vacate his office by reason of any resolution request or notice of the directors or any of them notwithstanding anything in the articles or any agreement.

Repeal of s. 121 of principal Act and enactment of section in its place.

Age limit for directors.

**92.** Section 121 of the principal Act is repealed and the following section is enacted and inserted in its place:—

121. (1) Subject to the provisions of this section no person of or over the age of seventy-two years shall be appointed or act as a director of a public company or of a subsidiary of a public company but nothing

in this subsection prevents a person from acting as a director of a company during the period commencing on the day on which he attains the age of seventy-two years and ending at the conclusion of the annual general meeting commencing next after that day.

(2) The office of a director of a public company or of a subsidiary of a public company shall become vacant at the conclusion of the annual general meeting commencing next after he attains the age of seventy-two years or, if he has attained the age of seventy-two before the commencement of the Companies Act Amendment Act, 1979, at the conclusion of the annual general meeting commencing next after the commencement of that Act.

(3) Any act done by a person as director shall be valid notwithstanding that it is afterwards discovered that he was of or over the age of seventy-two years at the time of his appointment or that his appointment had terminated by virtue of subsection (2) of this section.

(4) Where the office of a director has become vacant by virtue of subsection (2) of this section no provision for the automatic re-appointment of retiring directors in default of another appointment shall apply in relation to that director.

(5) If any such vacancy has not been filled at the meeting at which the office became vacant the office may be filled as a casual vacancy.

(6) Notwithstanding anything in this section a person of or over the age of seventy-two years may, by a resolution reciting the age of that person being a resolution of which no shorter notice than that required to be given to the members of the company of an annual general meeting has been duly given, passed by a majority of not less than three-fourths of such members of the company as being entitled so to do vote in person or, where proxies are allowed, by proxy, at a general meeting of that company be appointed or re-appointed as a director of that company to hold office until the conclusion of the next annual general meeting of the company or be authorized to continue in office as a director until the conclusion of the next annual general meeting of the company but where the company is a subsidiary of a public company, the appointment, re-appointment or authorization pursuant to this subsection shall not have effect unless either the person so appointed, re-appointed or authorized is a director of the holding company or the appointment or re-appointment of, or authorization relating to, the person as a director of the company has been approved by a similar resolution of the holding company.

(6a) Notwithstanding anything in this section, where the articles of a company limited by guarantee provide for the holding of postal ballots for the election of directors and a postal ballot for the election of a director or directors is held in which—

(a) the members entitled to vote have been given notice in writing by the company stating that a candidate is of or over the age of seventy-two years and reciting the age of the candidate;

and

(b) that candidate is elected by a majority of not less than three-fourths of the members who, being entitled to vote, vote in the ballot,

that candidate may be appointed or re-appointed as a director to hold office until the conclusion of the next annual general meeting of the company.

(6b) Notwithstanding anything in this section, where the articles of a company limited by guarantee provide for the election or appointment of directors otherwise than by members at a general meeting or by postal ballot of members and the Commission, by order in writing, declares that this section does not apply to the company or its directors, the section shall not, subject to any conditions that the Commission specifies in the order, so apply.

(6c) The Commission may, by instrument in writing, revoke or vary a declaration made under subsection (6b) of this section.

(6d) A vacancy in the office of a director occurring by virtue of subsection (2) of this section shall not be taken into account in determining when other directors are to retire.

(7) Nothing in this section shall limit or affect the operation of any provision of the memorandum or articles of a company preventing any person from being appointed a director or requiring any director to vacate his office at any age less than seventy-two years.

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

**93. Section 122 of the principal Act is amended—**

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

(c) of any offence under section 47, 124, 180j, 374b or 374c of this Act or any of the corresponding provisions of the law of another State or of a Territory of the Commonwealth or under section 113 of the Securities Industry Act, 1979, or a corresponding provision of the law of another State or of a Territory of the Commonwealth;;

(b) by striking out from subsection (2) the word “Minister” and inserting in lieu thereof the word “Commission”;

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

(2a) Service on the Commission of originating process in proceedings for leave under this section shall, if the hearing is not less than ten days after the day of service, be sufficient compliance with subsection (2) of this section.;

and

(d) by striking out from subsection (3) the word “Minister” and inserting in lieu thereof the word “Commission”.

Amendment of  
principal Act  
s. 123—  
Disclosure of  
interests in  
contracts,  
property,  
offices, etc.

**94. Section 123 of the principal Act is amended—**

(a) by striking out subsection (3) and inserting in lieu thereof the following subsection:—

(3) A director of a company shall be deemed not to be interested or to have been at any time interested in any contract or proposed contract or mortgage charge or other security or proposed mortgage charge or other security by reason only—

(a) that he has guaranteed or joined in guaranteeing the payment of any debt or the performance of any obligation of the company;

(b) that he has given or joined in giving an indemnity to any person in respect of any debt or obligation of the company;

or

(c) in a case where a contract or proposed contract or mortgage charge or other security or proposed mortgage charge or other security has been or will be made for the benefit of or on behalf of a corporation which by virtue of the provisions of subsection (5) of section 6 is deemed to be related to the company—that he is a director of that corporation,

and this subsection shall have effect not only for the purposes of this Act but also for the purposes of any other law but shall not affect the operation of any provision in the Articles of the company.;

and

(b) by striking out subsection (4) and inserting in lieu thereof the following subsection:—

(4) For the purposes of subsection (1) of this section, a general notice given to the directors of a company by a director to the effect that he is an officer or a member of a specified corporation or a member of a specified firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that corporation or firm shall be deemed to be a sufficient declaration of interest in relation to any contract so made or proposed to be made if—

(a) the notice states the nature and extent of the interest of the director in the corporation or firm;

(b) when the question of confirming or entering into the contract is first taken into consideration, the extent of his interest in the corporation or firm is not greater than is stated in the notice;

and

(c) the notice is given at a meeting of the directors or the director takes reasonable steps to ensure that it is brought up and read at the next meeting of the directors after it is given.

95. Section 124 of the principal Act is amended—

(a) by striking out from paragraph (a) of subsection (3) the word “liable” and inserting in lieu thereof the passage “subject to subsection (4) of this section, liable”;

and

(b) by striking out subsection (4) and inserting in lieu thereof the following subsections:—

Amendment of  
principal Act,  
s. 124—  
Duty and  
liability  
of officers.

(4) Where an officer of a corporation who commits a breach of this section has been found by a court to be liable to pay to a person an amount by reason of a contravention of Part X of the Securities Industry Act, 1979, that was the subject of the same act or transaction as the breach of this section, the amount of the liability of the officer under this section shall be reduced by the firstmentioned amount.

(5) For the purposes of subsection (4) of this section the onus of proving that the liability of a person to pay an amount to another person arose from the same act or transaction from which another liability arose lies on the person liable to pay the amount.

(6) 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.

Repeal of  
s. 124a of  
principal Act.

96. Section 124a of the principal Act is repealed.

Amendment of  
principal Act,  
s. 126—  
Register of  
Directors'  
shareholdings.

97. Section 126 of the principal Act is amended—

- (a) by striking out from paragraphs (a) and (b) of subsection (1) the passage “an interest” and inserting in lieu thereof, in each case, the passage “a relevant interest”;
- (b) by striking out from subsections (9) and (10) the word “Registrar” and inserting in lieu thereof, in each case, the word “Commission”;
- (c) by striking out from subsection (14) the passage “except subsections (1) and (3) of that section” and inserting in lieu thereof the passage “(paragraphs (a) and (c) of subsection (1) of that section excepted)”;

and

- (d) by striking out from subsection (14) the passage “an interest” and inserting in lieu thereof the passage “a relevant interest”.

Amendment of  
principal Act,  
s. 127—  
General duty  
to make  
disclosure.

98. Section 127 of the principal Act is amended—

- (a) by striking out the word “and” between paragraphs (b) and (c) of subsection (1);
- (b) by inserting after paragraph (c) the following paragraph:—  
and  
(d) if he is a director of a public company or a subsidiary of a public company on the date when he attained, or will attain, the age of seventy-two years.;
- (c) by striking out subparagraph (iii) of paragraph (a) of subsection (2) and inserting in lieu thereof the following subparagraph:—  
(iii) as the case may require, the date on which the director became aware that he had a relevant interest in the shares, debentures or participatory interests or the date on which the director became aware that he had acquired the right or option or the date on which the director entered into the contract,;

(d) by striking out the word “and” between paragraphs (a) and (b) of subsection (2);

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

and

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

(i) the commencement of the Companies Act Amendment Act, 1979;

or

(ii) the date on which the director became a director, whichever last occurs;

and

(f) by striking out subsections (4), (5), (6) and (7) and inserting in lieu thereof the following subsections:—

(4) In any proceedings under this section, 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 the time.

(5) In this section—

(a) a reference to a participatory interest is a reference to an interest within the meaning of section 76 of this Act;

and

(b) a reference to a person who has or acquires shares, debentures or participatory interests or a relevant interest in shares, debentures or participatory interests includes a reference to a person who, under an option, has or acquires the right to acquire a share, debenture or participatory interest or a relevant interest in a share, debenture or participatory interest.

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

99. Section 129 of the principal Act is amended by striking out subsection (2) and inserting in lieu thereof the following subsection:—

(2) Where such a payment is to be made to a director in connection with the transfer to any person, as a result of an offer made to shareholders, of all or any of the shares in the company, that director shall take all reasonable steps to secure that particulars with respect to the proposed payment, including the amount thereof, shall be included in or

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

sent with any notice of the offer made for their shares which is given to any shareholders unless those particulars are furnished to the shareholders by virtue of Part VIb of this Act.

Amendment of  
principal Act,  
s. 132—  
Secretary.

**100. Section 132 of the principal Act is amended—**

(a) by striking out subsections (2) and (3) and inserting in lieu thereof the following subsection:—

(2) The secretary or secretaries shall be appointed by the directors and a secretary who ordinarily resides in the State shall be present at the registered office of the company by himself or his agent or clerk on the days and at the hours during which the registered office is to be accessible to the public.;

and

(b) by striking out subsection (6) and inserting in lieu thereof the following subsection:—

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

Penalty: One hundred dollars.

Default penalty.

Amendment of  
principal Act,  
s. 134—  
Register of  
directors,  
managers and  
secretaries.

**101. Section 134 of the principal Act is amended—**

(a) by striking out paragraph (c) of subsection (2) and inserting in lieu thereof the following paragraph:—

(c) particulars of directorships held by the director in other corporations that under the law of the State or any other State or of a Territory of the Commonwealth are public companies or subsidiaries of public companies, but it shall not be necessary for the register to contain particulars of directorships held by a director of a corporation in a related corporation.;

(b) by striking out subsection (4) and inserting in lieu thereof the following subsection:—

(4) The register shall specify with respect to each manager and secretary his full name and address and other occupation (if any) and shall contain his consent in writing to his appointment as manager or secretary, as the case may be.;

and

(c) by striking out subsections (6), (7) and (8) and inserting in lieu thereof the following subsections:—

(6) The company shall lodge with the Commission—

(a) within one month after incorporation, a return in the prescribed form containing the particulars required to be specified in the register;

(b) within one month after a person ceases to be, or becomes, a director of the company, a return in the prescribed form notifying the Commission of the change and containing, with respect to each then director of the company, the particulars required to be specified in the register;

(c) within one month after a person becomes a manager or secretary of the company, a return in the prescribed form notifying the Commission of that fact and specifying the full name, address and other occupation (if any) of that person;

and

(d) within one month after a person ceases to be a manager or secretary of the company, a return in the prescribed form notifying the Commission of that fact.

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

(8) A certificate of the Commission stating that from any return lodged with the Commission pursuant to this section it appears that at any time specified in the certificate any person was a director, manager or secretary of a specified company shall in all courts and by all persons having power to take evidence for the purposes of this Act, be received as *prima facie* evidence of the facts stated therein and for the purposes of this subsection a person who appears from any return so lodged to be a director, manager or secretary of a company shall be deemed to continue as such until by a subsequent return so lodged or by a notification of change in the prescribed form so lodged it appears that he has ceased to be such a director, manager or secretary.

**102.** Section 135 of the principal Act is amended by striking out from subsection (5) the word "Registrar" and inserting in lieu thereof the word "Commission".

Amendment of principal Act, s. 135—  
Statutory meeting and statutory report.

**103.** Section 136 of the principal Act is amended—

(a) by striking out from subsection (2) the word "Registrar" wherever it occurs and inserting in lieu thereof, in each case, the word "Commission";

(b) by striking out from subsection (2c) the word "Registrar" wherever it occurs and inserting in lieu thereof, in each case, the word "Commission";

and

(c) by striking out from subsection (4) the word "Registrar" and inserting in lieu thereof the word "Commission".

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

Amendment of  
principal Act,  
s. 137—  
Convening of  
extraordinary  
general  
meeting on  
requisition.

**104.** Section 137 of the principal Act is amended by striking out subsection (1) and inserting in lieu thereof the following subsection:—

(1) The directors of a company, notwithstanding anything in its articles, shall on the requisition of members holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital as at the date of the deposit carries the right of voting at general meetings or, in the case of a company not having a share capital, of members representing not less than one-tenth of the total voting rights of all members having at that date a right to vote at general meetings or, in either case, of not less than two hundred members, forthwith proceed duly to convene an extraordinary general meeting of the company to be held as soon as practicable but in any case not later than two months after the receipt by the company of the requisition.

Amendment of  
principal Act,  
s. 138—  
Calling of  
meetings.

**105.** Section 138 of the principal Act is amended by striking out subsection (2) and inserting in lieu thereof the following subsection:—

(2) A meeting of a company or of a class of members, other than a meeting for the passing of a special resolution, shall be called by notice in writing of not less than fourteen days or such longer period as is provided in the articles.

Amendment of  
principal Act,  
s. 140—  
Quorum,  
chairman,  
voting, etc.

**106.** Section 140 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “or a private company”;

and

(b) by striking out subsections (3), (4), (5), (6) and (7) and inserting in lieu thereof the following subsections:—

(3) A body corporate may by resolution of its directors or other governing body—

(a) if it is a member of a company, authorize such person as it thinks fit to act as its representative either at a particular meeting or at all meetings of the company or of any class of members;

or

(b) if it is a creditor (including a holder of debentures) of a company, authorize such person as it thinks fit to act as its representative either at a particular meeting or at all meetings of any creditors of the company,

and a person so authorized shall in accordance with his authority and until his authority is revoked by the body corporate be entitled to exercise the same powers on behalf of the body corporate as the body corporate could exercise if it were an individual member creditor or holder of debentures of the company.

(4) Where—

(a) a person present at a meeting is authorized to act as the representative of a body corporate at the meeting by virtue of an authority given by the body corporate under subsection (3) of this section;

and

(b) the person is not otherwise entitled to be present at the meeting,

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

(5) A certificate under the seal of the body corporate shall be *prima facie* evidence of the appointment or of the revocation of the appointment (as the case may be) of a representative pursuant to the provisions of subsection (3) of this section.

(6) Where a holding company holds the whole of the issued shares of a subsidiary and a minute is signed by a representative of the holding company authorized pursuant to subsection (3) of this section stating that any act, matter, or thing, or any ordinary or special resolution, required by this Act or by the memorandum or articles of the subsidiary to be made, performed, or passed by or at an ordinary general meeting or an extraordinary general meeting of the subsidiary has been made, performed, or passed, that act, matter, thing, or resolution shall, for all purposes, be deemed to have been duly made, performed, or passed by or at an ordinary general meeting, or as the case requires, by or at an extraordinary general meeting of the subsidiary.

(7) Where by or under any provision of this Act any notice, copy of a resolution, or other document relating to any matter is required to be lodged by a company with the Commission, and a minute referred to in subsection (6) of this section is signed by the representative in pursuance of that subsection and the minute relates to such a matter the company shall, within one month after the signing of the minute, lodge a copy thereof with the Commission.

**107. Section 141 of the principal Act is amended—**

Amendment of  
principal Act,  
s. 141—  
Proxies.

(a) by striking out subsection (1) and inserting in lieu thereof the following subsections:—

(1) Subject to subsection (2) of this section, a member of a company entitled to attend and vote at a meeting of the company, or at a meeting of any class of members of the company, shall be entitled to appoint—

(a) in the case of a company not having a share capital—  
another member or, where the articles so provide,  
another person (whether a member or not);

or

(b) in any other case—not more than two other persons  
(whether members or not),

as his proxy or proxies to attend and vote instead of the member at the meeting and a proxy appointed to attend and vote instead of a member shall also have the same right as the member to speak at the meeting, but unless the articles otherwise provide a proxy shall not be entitled to vote except on a poll.

(1a) Where a member appoints two proxies, the appointment shall be of no effect unless each proxy is appointed to represent a specified proportion of the member's voting rights.;

(b) by striking out from subsection (2) the passage "or a private company";

and

(c) by striking out subsection (3) and inserting in lieu thereof the following subsection:—

(3) In every notice calling a meeting of a public company or of any class of members of a public company, there shall appear with reasonable prominence—

(a) in the case of a public company having a share capital, a statement—

(i) that a member entitled to attend and vote is entitled to appoint not more than two proxies;

(ii) that, where more than one proxy is appointed, each proxy must be appointed to represent a specified proportion of the member's voting rights;

and

(iii) that a proxy need not be a member;

or

(b) in the case of a public company not having a share capital, a statement—

(i) that a member entitled to attend and vote is entitled to appoint a proxy to attend and vote instead of the member;

and

(ii) that a proxy must, or need not be, a member (as the case requires),

and if default is made in complying with this subsection as respects any meeting, every officer of the company who is in default shall be guilty of an offence against this Act.

Amendment of  
principal Act,  
s. 142—  
Power of  
Court to  
order meeting.

108. Section 142 of the principal Act is amended by inserting after subsection (2) the following subsection:—

(3) For the purposes of an application to the Court or a meeting held by order of the Court under this section, the personal representative of a deceased member of a company shall be deemed to be a member of the company and, notwithstanding anything to the contrary in this Act or the memorandum or articles of the company, to have the same voting rights as the deceased member had immediately before his death by reason of his holding shares that on his death were transmitted to his personal representative by operation of law.

**109. Section 144 of the principal Act is amended—**

Amendment of  
principal Act,  
s. 144—  
Special  
resolutions.

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

(2) Notwithstanding the provisions of subsection (1) of this section if it is so agreed by a majority in number of the members having the right to attend and vote at the meeting, being a majority which together holds not less than ninety-five per centum in nominal value of the shares giving that right or, in the case of a company not having a share capital, together represents not less than ninety-five per centum of the total voting rights of all members having the right to attend and vote at the meeting, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given.;

and

- (b) by striking out paragraph (b) of subsection (4) and inserting in lieu thereof the following paragraph:—

(b) if no such provision is made by the articles, by three members so entitled, or by one member or two members so entitled, if that member holds or those two members together hold not less than ten per centum of the paid-up share capital of the company or, where the company does not have a share capital, if that member represents, or those two members together represent, not less than one-tenth of the total voting rights of all members having the right to attend and vote at the meeting.

**110. Section 146 of the principal Act is amended by striking out subsections (1) and (2) and inserting in lieu thereof the following subsections:—**

Amendment of  
principal Act  
s. 146—  
Registration  
and copies of  
certain  
resolutions  
and  
agreements.

- (1) A printed copy of—

- (a) every special resolution;
- (b) each resolution or agreement which binds a class of shareholders, whether or not agreed to by all the members of that class;

and

- (c) each document or resolution that attaches rights to shares (whether or not in substitution for other rights) and is not otherwise required to be lodged with the Commission under this Act,

shall, except where otherwise expressly provided by this Act, within one month after the passing or making thereof, be lodged by the company with the Commission.

(2) Where articles have not been registered a printed copy of every resolution, document or agreement to which this section applies shall be forwarded to any member at his request on payment of twenty-five cents or such less sum as the company directs.

Amendment of  
principal Act,  
s. 149—  
Inspection of  
minute books,  
etc.

**111.** Section 149 of the principal Act is amended by striking out subsections (1) and (2) and inserting in lieu thereof the following subsections:—

(1) The books containing the minutes of proceedings of any general meeting and of a meeting of the directors or of the managers (if any) of the company shall be kept by the company at the registered office or the principal place of business in the State of the company, and, in the case of the books containing the minutes of proceedings of general meetings, shall be open to the inspection of any member without charge.

(2) Any member shall be entitled to be furnished within seven days after he has made a request in writing in that behalf to the company with a copy of any minutes of a general meeting at a charge not exceeding twenty cents for every hundred words thereof.

Amendment of  
principal Act,  
s. 151—  
Register and  
index of  
members.

**112.** Section 151 of the principal Act is amended by striking out from subsection (2) the word “Registrar” and inserting in lieu thereof the word “Commission”.

Amendment of  
principal Act,  
s. 152—  
Where  
register to be  
kept.

**113.** Section 152 of the principal Act is amended by striking out subsection (2) and inserting in lieu thereof the following subsection:—

(2) Every company shall within seven days after the register and index (if any) are first kept at a place other than the registered office lodge with the Commission notice of the place where the register and index (if any) are kept and shall within seven days after any change in the place at which the register and index (if any) are kept lodge with the Commission notice of the change.

Amendment of  
principal Act,  
s. 153—  
Inspection and  
closing of  
register.

**114.** Section 153 of the principal Act is amended by striking out subsection (3) and inserting in lieu thereof the following subsection:—

(3) Any member or other person may request the company to furnish him with a copy of the register, or of any part thereof, but only so far as it relates to names, addresses, number of shares held and amounts paid on shares, on payment in advance of twenty cents or such less sum as the company requires for every hundred words or fractional part thereof required to be copied and the company shall cause any copy so requested by any person to be sent to that person within a period of twenty-one days or within such further period as the Commission considers reasonable in the circumstances commencing on the day next after the day on which the request is received by the company.

Amendment of  
principal Act,  
s. 155—  
Power of  
court to  
rectify  
register.

**115.** Section 155 of the principal Act is amended—

(a) by striking out subsection (2);

and

(b) by striking out from subsection (3) the word “Registrar” and inserting in lieu thereof the word “Commission”.

**116. Section 156 of the principal Act is amended—**

- (a) by striking out subsection (4) and inserting in lieu thereof the following subsection:—

(4) Except as provided in this section no notice of any trust expressed, implied or constructive shall be entered on the register or branch register kept in the State or be receivable by the Commission and no liabilities shall be affected by anything done in pursuance of subsection (1), subsection (2) or subsection (3) of this section and the corporation concerned shall not be affected with notice of any trust by anything so done.;

- (b) by striking out from subsection (5) the passage “or a prescribed private company as defined in section 397”;

and

- (c) by striking out from subsection (5) the passage “or prescribed private company”.

Amendment of principal Act, s. 156—  
Limitation of liability of trustee, etc., registered as owner of shares.

**117. Section 157 of the principal Act is amended—**

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

(2) The company shall lodge with the Commission notice of the situation of the office where any branch register is kept and of any change in its situation, and if it is discontinued, of its discontinuance, and any such notice shall be lodged within one month after the opening of the office or of the change or discontinuance, as the case may be.;

and

- (b) by striking out subsections (7) and (8) and inserting in lieu thereof the following subsections:—

(7) This section shall apply to all companies incorporated by or under any Act of the Parliament of the State.

(8) If by virtue of the law in force in any other country, State or Territory any corporation incorporated under that law keeps in the State a branch register of its members, the Commission may by order published in the *Gazette* declare that the provisions of this Act relating to inspection, place of keeping and rectification of registers of members shall, subject to any modifications specified in the order, apply to and in relation to any such branch register kept in the State as they apply to and in relation to the registers of companies under this Act and thereupon those provisions shall apply accordingly.

(9) If default is made in complying with this section the company and every officer of the company who is in default and every person who, pursuant to section 152 of this Act has arranged to make up the principal register, and who is in default shall be guilty of an offence against this Act.

Amendment of principal Act, s. 157—  
Branch registers.

**118. Section 158 of the principal Act is amended—**

- (a) by striking out from subsection (4) the word “Registrar” and inserting in lieu thereof the word “Commission”;

and

- (b) by striking out subsections (5) and (6) and inserting in lieu thereof the following subsections:—

Amendment of principal Act, s. 158—  
Annual return by a company having a share capital.

(5) 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.

(6) A notice in force under this section as it existed before the enactment of the Companies Act Amendment Act, 1979, shall remain in force until the first day of July, 1979, and shall thereafter have no further force or effect.

Amendment of principal Act, s. 159—  
Annual return by a company not having share capital.

**119.** Section 159 of the principal Act is amended—

(a) by striking out from subsection (1) the word “Registrar” and inserting in lieu thereof the word “Commission”;

and

(b) by striking out from paragraph (c) of subsection (2) the word “Registrar” and inserting in lieu thereof the word “Commission”.

Amendment of principal Act, s. 159a—  
Auditors’ statement.

**120.** Section 159a of the principal Act is amended by striking out the word “Registrar” and inserting in lieu thereof the word “Commission”.

Amendment of principal Act, s. 160—  
Exemption of certain companies.

**121.** Section 160 of the principal Act is amended—

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

(b) keeps its principal share register at a place within five kilometres of the office of the Commission;

and

(b) by striking out from subsection (2) the word “Governor” and inserting in lieu thereof the word “Commission”.

Amendment of principal Act, s. 161—  
Interpretation.

**122.** Section 161 of the principal Act is amended—

(a) by inserting after the definition of “accounts” 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;;

and

(b) by inserting after the definition of “holding company” the following definitions:—

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

“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 in 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:.

123. Section 161aa of the principal Act is repealed.

Repeal of  
s. 161aa of  
principal Act.

124. Section 161a of the principal Act is amended by striking out from subsection (6) the word “Registrar” and inserting in lieu thereof the word “Commission”.

Amendment of  
principal Act,  
s. 161a—  
Accounts to  
be kept.

125. Section 161b of the principal Act is amended—

(a) by striking out from subsection (2) the word “Registrar” and inserting in lieu thereof the word “Commission”;

(b) by striking out from subsection (3) the word “Registrar” and inserting in lieu thereof the word “Commission”;

(c) by striking out from subsection (5) the word “Registrar” wherever it occurs and inserting in lieu thereof, in each case, the word “Commission”;

(d) by striking out subsection (6) and inserting in lieu thereof the following subsection:—

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

(e) by striking out subsection (8) and inserting in lieu thereof the following subsection:—

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

(f) by striking out the word “Board” wherever it occurs in subsections (9) and (10) and inserting in lieu thereof, in each case, the word “Court”;

and

(g) by striking out the word “Registrar” wherever it occurs in subsections (9), (10), (11), (12), (13) and (14) and inserting in lieu thereof, in each case, the word “Commission”.

Amendment of  
principal Act,  
s. 161b—  
Financial  
years of  
grouped  
companies.

Amendment of principal Act, s. 162—  
Profit and loss account, balance-sheet and group accounts.

**126. Section 162 of the principal Act is amended—**

- (a) by striking out from subsection (2) the word “Registrar” wherever it occurs and inserting in lieu thereof, in each case, the word “Commission”;
- and
- (b) by striking out from subsection (8) the passage “or 165ab” and inserting in lieu thereof the passage “or 165b”.

Amendment of principal Act, s. 162a—  
Director’s reports.

**127. Section 162a of the principal Act is amended—**

- (a) by striking out from subsection (1) the passage “(or in the case of a proprietary company that has only one director, by that director)”;
- (b) by striking out from paragraph (l) of subsection (1) the passage “will or may affect” and inserting in lieu thereof the passage “will or may substantially affect”;
- (c) by striking out from paragraph (o) of subsection (1) the passage “for the financial year in which the report is made” and inserting in lieu thereof the passage “for the next succeeding financial year”;
- and
- (d) by striking out from subsection (2) the passage “(or in the case of a proprietary company that has only one director, by that director)”.

Amendment of principal Act, s. 162c—  
Relief from requirements as to form and content of accounts and report.

**128. Section 162c of the principal Act is amended—**

- (a) by striking out from subsection (1) the word “Registrar” wherever it occurs and inserting in lieu thereof, in each case, the word “Commission”;
- (b) by inserting after subsection (1) the following subsection:—
  - (1a) Notice of an order under subsection (1) of this section shall be served on the company to which it relates.;
- (c) by striking out from subsection (2) the passage “The Registrar may where he considers it appropriate” and inserting in lieu thereof the passage “The Commission may, where the Commission considers it appropriate”;
- (d) by striking out from subsection (2) the passage “Registrar thinks fit” and inserting in lieu thereof the passage “Commission thinks fit”;
- (e) by inserting after subsection (2) the following subsection:—
  - (2a) Notice of an order under subsection (2) of this section shall be published in the *Gazette*.;
- (f) by striking out from subsection (3) the passage “The Registrar shall not make an order under subsection (1) or (2) unless he” and inserting in lieu thereof the passage “The Commission shall not make an order under subsection (1) or (2) of this section unless the Commission”;
- (g) by striking out from subsection (4) the word “Registrar” wherever it occurs and inserting in lieu thereof, in each case, the word “Commission”;

(h) by inserting after subsection (4) the following subsection:—

(4a) The revocation or suspension under subsection (4) of this section of an order does not take effect until—

(a) in the case of an order under subsection (1) of this section—notice of the revocation or suspension is served on the company to which the order relates;

and

(b) in the case of an order under subsection (2) of this section—notice of the revocation or suspension is published in the *Gazette*.;

and

(i) by striking out subsections (5), (6), (7) and (8) and inserting in lieu thereof the following subsections:—

(5) In determining any application under subsection (1) of this section, in making an order under subsection (2) of this section, or in revoking or suspending the operation of any order made under this section the Commission shall take into account any views that the Commission knows to be held by the persons who in the other States and the Territories of the Commonwealth exercise under the corresponding laws of those States and Territories functions similar to those exercised by the Commission under this section.

(6) A person aggrieved by—

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

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

or

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

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

129. Section 165 of the principal Act is amended—

(a) by striking out from paragraph (f) of subsection (2) the word “Registrar” and inserting in lieu thereof the word “Commission”;

and

(b) by striking out from paragraph (i) of subsection (2) the word “no” and inserting in lieu thereof the passage “except where the company is an exempt proprietary company, no”.

Amendment of  
principal Act,  
s. 165—  
Qualifications  
of auditors.

Repeal of s. 165a of principal Act and enactment of section in its place.

Unlimited exempt proprietary company need not appoint auditor in certain circumstances.

130. Section 165a of the principal Act is repealed and the following section is enacted and inserted in its place:—

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

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

and

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

(2) The directors of an exempt proprietary company that is an unlimited company are not required to comply with subsection (1) of section 166 of this Act, if—

(a) all members of the company have agreed, on a date not later than fourteen days after the incorporation of the company, that it is not necessary for the company to appoint an auditor;

and

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

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

(4) An exempt proprietary company that is 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) of this section are satisfied.

(5) Within one month after—

(a) a company that by reason of the circumstances referred to in subsection (1) or (2) of this section does not have an auditor ceases to be an exempt proprietary company 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) of this section 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 or firms or any combination thereof as auditor or auditors of the company.

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

**131.** Sections 165ab and 165b of the principal Act are repealed and the following section is enacted and inserted in their place:—

Repeal of ss. 165ab and 165b of principal Act and enactment of section in their place.

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

Exempt proprietary company need not appoint auditor in certain circumstances.

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

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

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

annual return of the company for the financial year to which the accounts or group accounts relate a certificate signed by not less than two directors of the company stating whether—

(a) the company has, in respect of that financial year—

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

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

and

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

and

(b) the accounts and group accounts (if any) have been properly prepared by a competent person.

(6) Where—

(a) 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;

or

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

or

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

there shall be deemed to be a vacancy in the office of auditor of that company and subsection (5) of section 166 of this Act shall apply to that vacancy.

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

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

**132.** Section 166 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Repeal of  
s. 166 of  
principal Act  
and enactment  
of section in  
its place.

Appointment  
of auditors.

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

(2) A person or firm appointed as auditor of a company under subsection (1) of this section 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 or firms or any combination thereof 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 or firms or any combination thereof to fill the vacancy.

Penalty: One hundred dollars.

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

(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, unless—

(a) the company at a general meeting has appointed a person or persons or a firm or firms or any combination thereof to fill the vacancy;

or

(b) where the company is an exempt proprietary company, all the members of the company have at an annual general meeting agreed that it is not necessary for the vacancy to be filled,

appoint a person or persons or a firm or firms or any combination thereof 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) of this section given by a firm shall be signed in the firm name and in his own name by a member of the firm who is a registered company auditor.

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

(10) Where an auditor of a company is removed from office at a general meeting in accordance with section 166b of this Act—

(a) the company may at that meeting (without adjournment) by a resolution passed by a majority of not less than three-fourths of such members of the company as, being entitled so to do, vote in person or, where proxies are allowed, by proxy, forthwith appoint as auditor a person or persons or a firm or firms or any combination thereof to whom or which has been sent a copy of the notice of nomination in accordance with subsection (3) of section 166a of this Act;

or

(b) if such a resolution is not passed or, by reason only that such a copy of the notice of nomination has not been sent to a person, could not be 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 or firms or any combination thereof, 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) of this section the company shall, within seven days after the failure, notify the Board accordingly whereupon the Board shall, unless—

(a) 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;

or

(b) where the company is an exempt proprietary company, all the members of the company have agreed at an annual general meeting that it is not necessary for another auditor to be appointed and the company has notified the Board of that agreement,

appoint as auditor or auditors of the company a person or persons or a firm or firms or any combination thereof who or which consents or consent to be so appointed.

(13) Subject to subsection (12) of this section, if a company does not appoint an auditor when required by this Act to do so, the Board

may, on the application in writing of any member of the company, appoint as auditor or auditors of the company a person or persons or a firm or firms or any combination thereof who or which consents or consent to be so appointed.

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

(15) Notwithstanding subsection (4) of this section an auditor of a company that becomes a subsidiary of a corporation shall, unless he sooner vacates his office, 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) of this section he shall be guilty of an offence against this Act and liable to a penalty not exceeding one hundred dollars and, in the case of an offence against subsection (1) or (5) of this section, to a default penalty not exceeding ten dollars.

**133. Section 166b of the principal Act is amended—**

(a) by striking out subsection (5) and inserting in lieu thereof the following subsection:—

**Amendment of  
principal Act,  
s. 166b—  
Removal and  
resignation  
of auditor.**

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

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

and

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

(b) by striking out subsections (8), (9) and (10) and inserting in lieu thereof the following subsections:—

(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 giving the company an opportunity to be heard 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) of this section, 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) of this section 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 notice is received by the company,

whichever is the later.;

and

(c) by striking out subsection (12) and inserting in lieu thereof the following subsection:—

(12) Within fourteen days after the receipt of a notice of resignation from 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 Commission, 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 Commission to the trustee for the holders of debentures of the borrowing corporation.

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

Amendment of  
principal Act,  
s. 167—  
Powers and  
duties of  
auditors as  
to reports  
on accounts.

134. Section 167 of the principal Act is amended by striking out subsections (7), (8) and (9) and inserting in lieu thereof the following subsections:—

(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 and is entitled so to be heard notwithstanding that he retires at that meeting or a resolution to remove him from office is passed at that meeting.

(8) If an auditor of a company becomes aware that the company or the directors have made default in complying with the provisions of section 136 of this Act or subsection (1), (3) or (4) of section 162 of this Act relating to the laying of accounts or group accounts before the annual general meeting of the company, the auditor shall immediately inform the Commission by notice in writing and, if accounts or group accounts have been prepared and audited, forward to the Commission a copy of the accounts or group accounts, and of his report thereon.

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

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

and

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

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

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

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

135. Section 167b of the principal Act is repealed and the following section is enacted and inserted in its place:—

Repeal of s. 167b of principal Act and enactment of section in its place.

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

Qualified privilege for auditors in respect of certain defamatory statements.

- (a) in so far as the defamatory matter is so published in the course of, and relates to, the exercise or performance by the auditor of his functions or duties under this Act;

and

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

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

- (a) that an auditor has in respect of defamatory matter published by him where it is defamatory matter not referred to in that subsection or is published in circumstances not so referred to;

or

- (b) that any other person has in respect of defamatory matter published by him, whether or not it is defamatory matter referred to in that subsection.

136. Section 167c of the principal Act is amended—

Amendment of principal Act, s. 167c—  
Application of Part to certain corporations.

- (a) by striking out from subsection (2) the word “or” secondly occurring and inserting in lieu thereof the word “of”;
- (b) by striking out subsection (5) and inserting in lieu thereof the following subsection:—

(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—

(a) that no accounts are laid before the annual general meeting of the corporation other than accounts that—

(i) comply with the provisions of that law;

or

(ii) comply with such conditions as are specified by the Commission;

or

(b) that where accounts that comply with such conditions as are specified by the Commission are laid before the annual general meeting of the corporation, an auditor's report to the members on those accounts is not laid before the meeting.;

(c) by striking out from subparagraph (ii) of paragraph (a) of subsection (7) the word "Registrar" and inserting in lieu thereof the word "Commission";

and

(d) by striking out from subsection (9) the word "Registrar" and inserting in lieu thereof the word "Commission".

Amendment of  
principal Act,  
s. 168—  
Interpretation  
and  
application.

**137.** Section 168 of the principal Act is amended—

(a) by striking out the word "and" between paragraphs (a) and (b) of the definition of "company" in subsection (1);

(b) by striking out from paragraph (b) of the definition of "company" in subsection (1) the word "Governor" and inserting in lieu thereof the word "Minister";

(c) by inserting after paragraph (b) of the definition of "company" in subsection (1) the following paragraph:—

and

(c) where the Minister has given his consent under section 172 of this Act in relation to a corporation, that corporation;;

and

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

(3) Where two or more inspectors have been appointed, whether by the same instrument or by different instruments, to investigate affairs of a company, each of those inspectors may exercise his powers or perform his functions under this Part independently of the other inspector or inspectors.

Amendment of  
principal Act,  
s. 169—  
Application  
for  
appointment  
of inspector.

**138.** Section 169 of the principal Act is amended by striking out subsections (3) and (4) and inserting in lieu thereof the following subsections:—

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

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

and

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

**139.** Section 170 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Repeal of  
s. 170 of  
principal Act  
and enactment  
of section in  
its place.

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

Appointment  
of Inspector.

- (a) it is desirable for the protection of the public or of members or creditors of a company or of holders of debentures of a company or of interests made available by a company;
  - (b) it is in the public interest because fraud or misfeasance or other misconduct by a person who is or has been concerned with affairs of a company is alleged;
- or
- (c) in any case it is in the public interest,

to appoint 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 or any necessary consent has been given for the investigation by such a person of affairs of a related corporation;
- and
- (b) the Minister is satisfied that in connection with that investigation it is expedient that an investigation be made into affairs of that corporation in the State,

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

(3) The Minister may, by instrument in writing, declare that a specified person whom he could appoint under subsection (2) of this section to investigate affairs of a specified corporation in the State shall have, in relation to the investigation of affairs of the corporation and subject to such terms and conditions as are specified in the instrument, such of the powers of an inspector appointed under subsection (1) of this section as are specified in the instrument, and the person so specified shall thereupon have the powers so specified, subject to the terms and conditions so specified, as if—

- (a) the corporation were a company within the meaning of subsection (1) of section 168 of this Act;  
and  
(b) that person had been appointed an inspector under this section.

Repeal of s. 171 of principal Act and enactment of section in its place.

Conditions, etc., of appointment of inspector.

**140.** Section 171 of the principal Act is repealed and the following section is enacted and inserted in its place:—

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

- (a) the matters into which the investigation is to be made being all the affairs or particular affairs of a company;  
and  
(b) the terms and conditions (if any) to which the appointment is subject.

(1a) The Minister—

- (a) may, in the instrument appointing an inspector, specify the period in respect of which the investigation is to be made;  
and  
(b) may, at any time by notice in writing given to an inspector, vary particulars specified in the instrument of appointment, being particulars referred to in paragraph (a) or paragraph (b) of subsection (1) of this section or may vary the period in respect of which the investigation is to be made.

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

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

Enactment of s. 171a of principal Act.

Appointment of Commission as inspector.

**141.** The following section is enacted and inserted in the principal Act after section 171 thereof:—

171a (1) Nothing in this or any other Act prevents the appointment of the Commission as an inspector and, where the Commission is so appointed, any reference in this Act that includes an inspector includes the Commission.

(2) Paragraph (a) of subsection (1) of section 177 of this Act in its application to the Commission, as an inspector, shall be deemed to be amended by omitting the passage “, the power to administer an oath and the power to examine on oath”.

Amendment of principal Act, s. 172—  
Investigation of affairs of related corporation.

Amendment of principal Act, s. 175—  
Officer failing to comply with requirement of this Part.

**142.** Section 172 of the principal Act is amended by striking out the word “Governor” and inserting in lieu thereof the word “Minister”.

**143.** Section 175 of the principal Act is amended—

- (a) by striking out from subsection (1) the passage “certify the failure by writing under his hand to the Court” and inserting in lieu thereof the passage “apply to the Court for an order under subsection (2) of this section”;

and

- (b) by striking out from subsection (2) the passage "Where an inspector gives a certificate under subsection (1)" and inserting in lieu thereof the passage "Where an inspector applies to the Court under subsection (1) of this section".

**144.** Section 176 of the principal Act is amended by striking out from subsection (6) the passage "institution of" and inserting in lieu thereof the passage "institution or preparation of".

Amendment of principal Act, s. 176—  
Notes of examination.

**145.** Section 178 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Repeal of s. 178 of principal Act and enactment of section in its place.

178. (1) An inspector may, and if so directed by the Minister shall, make interim reports to the Minister and on the completion or termination of the investigation the inspector shall report his opinion on or in relation to the affairs of the company or companies which he has investigated, together with the facts upon which his opinion is based, to the Minister.

Reports by inspectors, etc.

(1a) An inspector may, when making a report under this section, give to the Minister any books of which he has taken possession under subsection (4) of section 173 of this Act and the Minister—

- (a) may retain the books for such period as he considers to be necessary to enable a decision to be made as to whether or not any legal proceedings ought to be instituted as a result of the investigation;
  - (b) may retain the books for such further period as he considers to be necessary to enable any such proceedings to be instituted and prosecuted;
  - (c) may permit other persons to inspect the books while they are in his possession;
  - (d) may permit the use of the books for the purposes of any legal proceeding instituted as a result of the investigation;
- and
- (e) shall permit a person who would be entitled to inspect any one or more of the books if they were not in the possession of the Minister to inspect at all reasonable times such of the books as that person would be so entitled to inspect.

(2) Subject to subsection (3) of this section, a copy of a final report shall, and a copy of the whole or any part of an interim report may, if the Minister thinks fit, be forwarded by the Minister to the registered office, in the place of its incorporation, of the company to which the report relates, and a further copy of any report so forwarded shall, at the request of an applicant under section 169 of this Act, be delivered to him.

(3) The Minister is not bound to furnish a company or any other person with a copy of any part of a report by an inspector or with a complete copy of such a report, if the Minister is of opinion that there is good reason for not divulging the contents of the report or of parts of the report.

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

(5) Where an inspector has caused notes of an examination under this Part to be forwarded to the Minister with the report to which they relate, a copy of the notes may, subject to section 176 of this Act, be supplied to such persons and upon such conditions as the Minister thinks fit.

(6) If from a report under this section, or from the notes of an examination under this Part, the Minister is of the opinion that an offence may have been committed by a person and that a prosecution ought to be instituted, the Minister shall cause a prosecution to be instituted and prosecuted.

(7) Where the Minister has formed the opinion referred to in subsection (6) of this section he may, by notice in writing given before or after the institution of a prosecution in accordance with that subsection, require an officer of the company of which affairs were investigated (not being an officer who is, or, in the opinion of the Minister, is likely to be, a defendant in the proceedings) to give all assistance in connection with the prosecution or proposed prosecution that he is reasonably able to give.

(8) Where a person to whom a notice has been given under subsection (7) of this section fails to comply with a requirement specified in the notice the Court may, on the application of the Minister, direct that person to comply with the requirement.

(9) If from a report of an inspector made under this section, or from the notes of an examination under this Part, the Minister is of the opinion that proceedings ought in the public interest to be brought by a company, affairs of which were investigated by the inspector, for the recovery of damages in respect of fraud, misfeasance or other misconduct in connection with affairs of the company or for the recovery of property of the company the Minister may cause proceedings to be instituted accordingly in the name of the company.

(10) 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 of this Act.

(11) 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.

(12) Nothing in this section operates to diminish the protection afforded to witnesses by the Evidence Act, 1929-1978.

146. Section 179 of the principal Act is amended by striking out subsections (2), (3) and (4) and inserting in lieu thereof the following subsections:—

Amendment of  
principal Act,  
s. 179—  
Cost of  
investigation.

(2) Where the Minister is of the opinion that the whole or any part of the expenses of and incidental to an investigation into affairs of a company under this Part (including the expenses incurred and payable by the Minister in any proceedings brought by him in the name of a company) should be paid by the company, the Minister may apply to the court for an order directing that the expenses or part thereof be so paid, or, if they have been paid under subsection (1) of this section, that the company reimburse the Crown or, in either case, that the company reimburse the Crown in respect of the remuneration of any servant of the Crown concerned with the investigation, and the court may make such order with respect to the application or its subject matter as it thinks fit.

(3) An order under subsection (2) of this section may specify the amount of the expenses to be paid or reimbursed and the time or times and the manner in which the payment or reimbursement of the expenses shall be made.

(4) Where an order has been made by the Court under subsection (2) of this section, the company named in the order, to the extent therein specified, is liable to pay expenses or reimburse the Crown.

(5) Any amount for which a company is liable pursuant to an order under subsection (2) of this section may be recovered as a debt due to the Crown in a court of competent jurisdiction.

(6) An inspector may include in his report a recommendation whether an application or applications under subsections (2) or (7) of this section should be made.

(7) An application referred to in subsection (8) of this section may be made to a court by or on behalf of the Minister—

(a) in the course of proceedings in that court instituted in the name of a company under subsection (9) of section 178 of this Act;

or

(b) upon, or within fourteen days after, a conviction by the court in proceedings certified by the Minister, for the purposes of the application, to have been instituted as a result of an investigation under this Part of affairs of a specified company,

and that court may make such order with respect to the application or its subject-matter as it thinks fit.

(8) The application that may be made under subsection (7) of this section is an application for the same order against a specified person (being, where the application is made under paragraph (a) of that subsection, a party to the proceedings or being, where the application is made under paragraph (b) of that subsection, the person the subject of the conviction) as the Court is empowered by subsection (2) of this section to make—

(a) in the case of an application under paragraph (a) of subsection (7) of this section—against the company in whose name the proceedings were instituted;

or

(b) in the case of an application under paragraph (b) of subsection (7) of this section—against the company referred to in the Minister's certificate.

(9) The provisions of subsections (3), (4) and (5) of this section apply, with such modifications as may be necessary, to and in relation to an order made pursuant to an application under subsection (7) of this section as if that order were an order made under subsection (2) of this section.

(10) Where—

(a) an inspector was appointed in pursuance of an application under subsection (1) of section 169 of this Act;

(b) the applicants have given security in accordance with subsection (3) of section 169 of this Act;

and

(c) the company fails to comply with an order under subsection (2) of this section,

the security shall in the discretion of the Minister be forfeited or, if the amount that the company has failed to pay in pursuance of the order is less than the amount of the security, a part of the security equal to the amount ordered to be paid shall be forfeited.

Amendment of  
principal Act,  
s. 179b—  
Orders may  
be made by  
Minister.

147. Section 179b of the principal Act is amended—

(a) by striking out from subsection (1) the passage “and it appears to the Governor” and inserting in lieu thereof the passage “and it appears to the Minister”;

(b) by striking out from subsection (1) the passage “the Governor may by proclamation” and inserting in lieu thereof the passage “the Minister may by order published in the *Gazette*”;

(c) by striking out from subsection (2) the passage “The Governor may by proclamation” and inserting in lieu thereof the passage “The Minister may, by order published in the *Gazette*,”.

and

(d) by striking out subsections (3), (4), (5) and (6) and inserting in lieu thereof the following subsections:—

(3) A copy of an order under subsection (1) of this section and of any order by which it is rescinded, revoked, altered or varied shall be served on the company to which it refers.

(4) Where an order made under subsection (1) of this section is in force a person aggrieved by the order may apply to the Court for revocation or variation of the order and the Court may if it is satisfied that it is reasonable to do so revoke or vary the order and any order by which it has been varied.

(5) A person who contravenes or fails to comply with an order under subsection (1) of this section is guilty of an offence against this Act.

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

(6) Where an offence under subsection (5) of this section is committed by a company, every officer (as defined in subsection (1) of section 5 of this Act) of the company who is in default is guilty of an offence against this Act.

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

**148.** Section 180 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Repeal of s. 180 of principal Act and enactment of section in its place.

180. (1) Where a report of an investigation under this Part has been made by an inspector application may be made to the Court by the Minister—

Application for winding up.

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

or

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

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

(a) in the case of a company not being a foreign company—proceedings in the Court for winding up had been commenced by the company;

and

(b) in the case of a foreign company—proceedings for an order for the affairs of the company so far as assets in the State are concerned to be wound up in the State had been commenced in the Court by a creditor or contributory of the company upon the liquidation of the company in the place in which it is incorporated.

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

(4) At the time of making an application under subsection (1) of this section the Minister shall cause notice of the application to be served on the company.

**149.** Section 180aa of the principal Act is repealed.

Repeal of s. 180aa of principal Act.

Amendment of  
principal Act,  
s. 180a—  
Interpretation.

**150.** Section 180a of the principal Act is amended—

(a) by striking out paragraphs (a) and (b) of subsection (5) and inserting in lieu thereof the following paragraphs:—

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

and

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

and

(b) by striking out from subparagraph (ii) of paragraph (a) of subsection (7) the word “substantially”.

Amendment of  
principal Act,  
s. 180b—  
Application of  
Part.

**151.** Section 180b of the principal Act is amended by striking out from subsection (1) the word “corporate” and inserting in lieu thereof the passage “corporate or unincorporate”.

Amendment of  
principal Act,  
s. 180c—  
Take-over  
offers.

**152.** Section 180c of the principal Act is amended—

(a) by striking out from paragraph (c) of subsection (1) the word “Registrar” and inserting in lieu thereof the word “Commission”;

and

(b) by striking out from paragraph (c) of subsection (3) the word “Registrar” and inserting in lieu thereof the word “Commission”.

Amendment of  
principal Act,  
s. 180d—  
Formula for  
calculating  
voting power.

**153.** Section 180d of the principal Act is amended by striking out from paragraph (b) of subsection (2) the passage “an interest” and inserting in lieu thereof the passage “a relevant interest”.

Amendment of  
principal Act,  
s. 180g—  
Statement by  
offeree  
company.

**154.** Section 180g of the principal Act is amended by striking out from subsection (3) the word “Registrar” and inserting in lieu thereof the word “Commission”.

Amendment of  
principal Act,  
s. 180h—  
Notice to  
offeree  
company.

**155.** Section 180h of the principal Act is amended by striking out from paragraph (b) of subsection (1) the word “Registrar” wherever it occurs and inserting in lieu thereof, in each case, the word “Commission”.

Amendment of  
principal Act,  
s. 180j—  
Liability for  
misstatements  
in Part A  
statements.

**156.** Section 180j of the principal Act is amended—

(a) by striking out subsections (1), (2) and (3) and inserting in lieu thereof the following subsections:—

(1) Where—

(a) there is, in a statement that purports to be a Part A statement given under section 180c of this Act, matter that is false in a material particular or materially misleading in the form and context in which it appears;

or

- (b) there is an omission of material matter from such a statement,

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

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

- (1a) Where—

- (a) there is, in a statement that purports to be a Part B statement given under section 180g of this Act, matter that is false in a material particular or materially misleading in the form and context in which it appears;

or

- (b) there is an omission of material matter from such a statement,

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

(3) The persons to whom subsection (1) of 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;

or

- (ii) a director who voted against that resolution;

and

- (c) subject to subsection (4) of this section, a person a notice of whose consent to the inclusion in the statement of a report made by him has been given to the offeree company under paragraph (b) of subsection (1) or under paragraph (b) of subsection (3) of section 180c of this Act.

(3a) The persons to whom subsection (1a) of this section applies are—

(a) the offeree company;

and

(b) a person who was a director of the offeree company at the time when the statement was given, not being a director who was not present at the meeting at which the resolution authorizing the signing of the statement was agreed to or a director who voted against that resolution.;

and

(b) by striking out subsection (5) and inserting in lieu thereof the following subsection:—

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

(a) that, when the statement was given, he—

(i) believed on reasonable grounds that the false matter was true;

(ii) 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 complaint 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.

Amendment of principal Act, s. 180l—  
Variation of take-over offers.

**157.** Section 180l of the principal Act is amended by striking out from subsection (5) the word “Registrar” and inserting in lieu thereof the word “Commission”.

Amendment of principal Act, s. 180r—  
Orders to protect rights under take-over schemes.

**158.** Section 180r of the principal Act is amended by striking out from subsection (1) the word “Minister” and inserting in lieu thereof the word “Commission”.

**159.** Section 180u of the principal Act is amended—

- (a) by striking out subsection (1) and inserting in lieu thereof the following subsection:—

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

and

- (b) by striking out from subsection (2) the word “Registrar” and inserting in lieu thereof the word “Commission”.

Amendment of principal Act, s. 180u—  
Regulations may be made with respect to certain matters.

**160.** Section 180w of the principal Act is amended—

- (a) by striking out subsection (4) and inserting in lieu thereof the following subsection:—

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

and

- (b) by inserting after subsection (5) the following subsection:—

(6) The provisions of this section do not apply in relation to section 180j of this Act.

Amendment of principal Act, s. 180w—  
Offences.

**161.** Section 180x of the principal Act is amended by striking out from subsection (3) the passage “(disregarding any extension under subsection (3) of section 180l of the period during which the take-over offer remains open)” and inserting in lieu thereof the following passage “(any variation under subsection (3) of section 180l being disregarded)”.

Amendment of principal Act, s. 180x—  
Acquisition of shares of shareholders dissenting from a take-over scheme.

**162.** Sections 180z and 180za of the principal Act are repealed.

Repeal of ss. 180z and 180za of principal Act.

**163.** Section 181 of the principal Act is amended—

- (a) by striking out from subsection (1) the passage “in a summary way”;
- (b) by striking out from subsection (4) the word “Registrar” and inserting in lieu thereof the word “Commission”;

and

- (c) by striking out from subsection (9) the passage “in a summary way”.

Amendment of principal Act, s. 181—  
Power to compromise with creditors and members.

**164.** Section 183 of the principal Act is amended by striking out subsections (3) and (4) and inserting in lieu thereof the following subsections:—

- (3) Where an order is made under this section, every company to which the order relates shall, within fourteen days after the making of the order, lodge with the Commission an office copy of the order.

Amendment of principal Act, s. 183—  
Provisions for facilitating reconstruction and amalgamation of companies.

(4) Notwithstanding the provisions of subsection (2) of this section the order so far as it relates to land shall not take effect until it is registered in the office of the Registrar-General and—

(a) in the case of land subject to the provisions of the Real Property Act, 1886-1975, until the Registrar-General has made in the Register Book such notations as are necessary to give effect to the order;

or

(b) in the case of land subject to the provisions of any Act relating to Crown lands, until either—

(i) an appropriate transfer is registered so that the land is transferred as provided by the order;

or

(ii) an entry of the vesting is made in the appropriate register kept under the Act to which the land is subject,

and, where an entry is made as provided in subparagraph (ii) of paragraph (b) of this subsection, the entry has the same effect as if the land were transferred.

Amendment of  
principal Act,  
s. 186—  
Remedy in  
cases of  
oppression.

165. Section 186 of the principal Act is amended—

(a) by striking out subsection (3) and inserting in lieu thereof the following subsection:—

(3) Where an order that the company be wound up is made pursuant to paragraph (a) of subsection (2) of this section the provisions of this Act relating to winding up of a company shall, with such adaptations as are necessary, apply as if the order had been made in proceedings in the Court commenced by the company.;

and

(b) by striking out from subsection (5) the word “Registrar” and inserting in lieu thereof the word “Commission”.

Amendment of  
principal Act,  
s.189—  
Power of  
Court to fix  
remuneration  
of receivers  
or managers.

166. Section 189 of the principal Act is amended—

(a) by striking out from subsection (2) the passage “The power of the Court shall—” and inserting in lieu thereof the passage “The power of the Court shall, where no previous order has been made with respect thereto—”;

and

(b) by striking out from paragraph (a) of subsection (2) the passage “where no previous order has been made with respect thereto,”.

Amendment of  
principal Act,  
s. 191—  
Notification of  
appointment of  
receiver.

167. Section 191 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “notice in the prescribed form of the fact with the Registrar” and inserting in lieu thereof the passage “notice of the fact with the Commission”;

and

(b) by striking out from subsection (2) the passage “lodge with the Registrar notice in the prescribed form” and inserting in lieu thereof the passage “lodge with the Commission notice”.

168. Section 193 of the principal Act is amended by striking out from subparagraph (i) of paragraph (c) of subsection (1) the word "Registrar" and inserting in lieu thereof the word "Commission".

Amendment of principal Act, s. 193—  
Provision as to information where receiver or manager appointed.

169. Section 194 of the principal Act is amended by striking out subsection (2) and inserting in lieu thereof the following subsection:—

Amendment of principal Act, s. 194—  
Special provisions as to statement submitted to receiver.

(2) Except to the extent that the Court otherwise directs, the statement shall be submitted by, and be verified by statutory declaration of, one or more of the persons who were at the date of the receiver's appointment the directors of the company and by the person who was at that date the secretary of the company, or by such of the persons hereafter in this subsection mentioned as the receiver may require to submit and verify the statement, that is to say—

- (a) persons who are or have been officers;
- (b) persons who have taken part in the formation of the company at any time within one year before the date of the receiver's appointment;
- (c) persons who are in the employment of the company, or have been in the employment of the company within that year, and are in the opinion of the receiver capable of giving the information required;
- (d) persons who are or have been within that year officers of or in the employment of a corporation which is, or within that year was, an officer of the company to which the statement relates.

170. Section 195 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Repeal of s. 195 of principal Act and enactment of section in its place.

195. (1) Every receiver or manager of the property of a company or of the property within the State of any other corporation shall—

Lodging of accounts of receivers and managers.

- (a) within one month after the expiration of the period of six months from the date of his appointment and of every subsequent period of six months and within one month after he ceases to act as receiver or manager, lodge with the Commission an account in the prescribed form showing—
  - (i) his receipts and his payments during each period of six months, or, where he ceases to act as receiver or manager, during the period from the end of the period to which the last preceding account related or from the date of his appointment, as the case may be, up to the date of his so ceasing;
  - (ii) the aggregate amount of those receipts and payments during all preceding periods since his appointment;

and

(iii) where he has been appointed pursuant to the powers contained in any instrument, the amount owing under that instrument at the time of his appointment, in the case of the first account, and at the expiration of every six months after his appointment and where he has ceased to act as receiver or manager at the date of his so ceasing and his estimate of the total value of all assets of the company or other corporation which are subject to that instrument;

and

(b) before lodging such account, verify by statutory declaration all accounts and statements referred to therein.

(1a) Notwithstanding the provisions of subsection (1) of this section, the accounts referred to in that subsection may be lodged within such times as may be prescribed in lieu of the times specified in that subsection but so that accounts are lodged at least twice a year.

(2) The Commission may of its own motion or on the application of the company or other corporation or a creditor cause the accounts to be audited by a registered company auditor appointed by the Commission and for the purpose of the audit the receiver or manager shall furnish the auditor with such vouchers and information as he requires and the auditor may at any time require the production of and inspect any books of account kept by the receiver or manager or any documents or other records relating thereto.

(3) Where the Commission causes the accounts to be audited upon the request of the company or other corporation or a creditor the Commission may require the applicant to give security for the payment of the cost of the audit.

(4) Every receiver or manager who makes default in complying with the provisions of this section shall be guilty of an offence against this Act.

Penalty: One hundred dollars. Default penalty.

Amendment of  
principal Act,  
s.196—  
Payments of  
certain debts  
out of assets  
subject to  
floating charge  
in priority to  
claims under  
charge.

171. Section 196 of the principal Act is amended—

(a) by inserting after subsection (1) the following subsection:—

(1a) The receiver shall, within one month of his appointment, call a meeting of employees entitled to priority by virtue of this section—

(a) to inform them of their rights relating to payment of debts owed to them;

and

(b) as far as he is able, to inform them of the time at which payments in respect of those debts are likely to be made.;

and

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

(2) For the purposes of this section—

- (a) “employee” includes a former employee;
- (b) “floating charge” includes a floating charge within the meaning of section 292 of this Act;
- and
- (c) the periods of time mentioned in section 292 of this Act shall be reckoned from the date of the appointment of the receiver or of possession being taken, as the case may be.

172. Section 198a of the principal Act is repealed.

Repeal of  
s. 198a of  
principal Act.

173. Section 199 of the principal Act is amended—

Amendment of  
principal Act,  
s. 199—  
Power of  
company to  
call meeting  
of creditors  
to appoint  
official  
manager.

(a) by striking out subsection (1) and inserting in lieu thereof the following subsection:—

(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) of this section, 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 Commission the company would not be able properly to comply with the requirements of this section, within such further period as the Commission 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.;

(b) by striking out subsection (4) and inserting in lieu thereof the following subsection:—

(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 subsection (3) of this section unless each director has furnished to the company such a certificate.;

(c) by striking out from subsection (7) the word “Registrar” wherever it occurs and inserting in lieu thereof, in each case, the word “Commission”;

and

(d) by striking out from subsection (15) the word “Registrar” and inserting in lieu thereof the word “Commission”.

Amendment of principal Act, s. 202—  
Power of creditors to place company under official management.

174. Section 202 of the principal Act is amended—

- (a) by striking out from paragraph (a) of subsection (2) the word “Registrar” and inserting in lieu thereof the word “Commission”;
- and
- (b) by striking out from subsection (6) the word “Registrar” wherever it occurs and inserting in lieu thereof, in each case, the word “Commission”.

Amendment of principal Act, s. 202b—  
Notice of appointment and address of official manager.

175. Section 202b of the principal Act is amended—

- (a) by striking out from subsection (1) the word “Registrar” wherever it occurs and inserting in lieu thereof, in each case, the word “Commission”;
- and
- (b) by striking out from subsection (2) the word “Registrar” and inserting in lieu thereof the word “Commission”.

Amendment of principal Act, s. 203a—  
Six-monthly meetings of creditors and members.

176. Section 203a of the principal Act is amended—

- (a) by striking out from subsection (1) the word “Registrar” wherever it occurs and inserting in lieu thereof, in each case, the word “Commission”;
- (b) by striking out from subsection (2) the word “Registrar” and inserting in lieu thereof the word “Commission”;
- (c) by striking out subsection (6) and inserting in lieu thereof the following subsection:—

(6) The official manager shall—

- (a) give written notice that the statement referred to in subsection (1) of this section has been prepared 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.;

and

- (d) by striking out from subsections (7) and (8) the word “Registrar” wherever it occurs and inserting in lieu thereof, in each case, the word “Commission”.

Amendment of principal Act, s. 203b—  
Stay of proceedings.

177. Section 203b of the principal Act is amended by inserting at the end of subsection (1) the passage “until the company ceases to be under official management”.

Amendment of principal Act, s. 203c—  
Power to extend period of official management.

178. Section 203c of the principal Act is amended—

- (a) by striking out from subsection (2) the passage “or earlier terminated” and inserting in lieu thereof the passage “or is sooner terminated”;

and

- (b) by striking out from subsection (4) the word "Registrar" and inserting in lieu thereof the word "Commission".

**179.** Section 204 of the principal Act is amended by striking out paragraph (c) of subsection (2) and the word "or" immediately preceding that paragraph and inserting in lieu thereof the following paragraphs:—

Amendment of principal Act, s. 204—  
Termination of appointment of official manager.

- (c) having been appointed official manager by an order of the Court under subsection (4) of section 202 of this Act he ceases to be a registered company auditor;

or

- (d) having been appointed official manager he becomes the auditor of the company.

**180.** Section 206 of the principal Act is amended by striking out from subsection (9) the word "Registrar" and inserting in lieu thereof the word "Commission".

Amendment of principal Act, s. 206—  
Duties of official manager.

**181.** Section 208 of the principal Act is amended by striking out subsection (4) and inserting in lieu thereof the following subsection:—

Amendment of principal Act, s. 208—  
Application and disposal of assets during official management.

- (4) The official manager may with the leave of the Court sell or otherwise dispose of or mortgage or charge any assets of the company.

**182.** Section 211a of the principal Act is amended—

Amendment of principal Act, s. 211a—  
Lodgement of office copy of court order.

- (a) by striking out from subsection (1) the word "Registrar" and inserting in lieu thereof the word "Commission";

and

- (b) by striking out from subsection (2) the word "Registrar" and inserting in lieu thereof the word "Commission".

**183.** Section 212 of the principal Act is amended—

Amendment of principal Act, s. 212—  
Release of official manager.

- (a) by striking out from subsection (5) the word "Registrar" and inserting in lieu thereof the word "Commission";

- (b) by inserting after subsection (5) the following subsection:—

(5a) If the meeting is not held on the day for which it is called under subsection (2) of this section, the person who was official manager shall, within seven days after that day, lodge with the Commission—

- (a) a notice that the meeting was not held on that day;

and

- (b) a copy of the report prepared under subsection (1) of this section.

Penalty: One hundred dollars. Default penalty.;

- (c) by striking out subsection (8a);

and

- (d) by striking out subsections (9), (10) and (11) and inserting in lieu thereof the following subsections:—

(9) If the report referred to in subsection (1) of this section and the explanations thereof are not, within two months after notice of the meeting has been given under subsection (3) of this section to 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 report and explanations had been adopted by a meeting of creditors of the company.

(11) Where the Court grants an application under subsection (10) of this section, the person who was the official manager shall lodge with the Commission an office copy of the order within seven days of the passing and entering of the order.

Penalty: One hundred dollars. Default penalty.

Amendment of principal Act, s. 213—  
Documents of company under official management.

**184.** Section 213 of the principal Act is amended by striking out subsection (2) and inserting in lieu thereof the following subsection:—

(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: One hundred dollars.

Amendment of principal Act, s. 214—  
Functions of committee of management and appointment of deputy official manager.

**185.** Section 214 of the principal Act is amended by striking out from subsections (3) and (3a) the word "Registrar" wherever it occurs and inserting in lieu thereof, in each case, the word "Commission".

Amendment of principal Act, s. 218—  
Liability as contributories of present and past members.

**186.** Section 218 of the principal Act is amended—

(a) by striking out paragraph (aa) from subsection (1) and inserting in lieu thereof the following paragraph:—

(aa) where the company is a limited company and became a limited company by virtue of a change of status pursuant to paragraph (a) of subsection (1) of section 25 of this Act, a past member of the company who was a member thereof at the time of the change of status shall, if the winding up commences within the period of three years after the change of status—

(i) be liable notwithstanding paragraph (a) of this section to contribute in respect of debts and liabilities contracted before the change of status;

and

- (ii) if no person who was a member of the company at the time of the change of status is a member at the commencement of the winding up, be liable so to contribute, notwithstanding paragraphs (a) and (c) of this subsection, and whether or not the existing members have satisfied the contributions required to be made by them in pursuance of this Act; ;
- (b) by striking out from paragraph (e) of subsection (1) the passage "subject to subsection (4) of this section" and inserting in lieu thereof the passage "subject to subsection (2) of this section";
- (c) by striking out from paragraph (eb) of subsection (1) the word "Registrar" and inserting in lieu thereof the word "Commission";
- and
- (d) by striking out subsections (2), (3) and (4) and inserting in lieu thereof the following subsection:—
- (2) On the winding up of a company limited both by shares and guarantee every member shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

**187. Section 221 of the principal Act is amended—**

Amendment of  
principal Act,  
s. 221—  
Application  
for  
winding up.

- (a) by striking out from subsection (1) the passage "on the petition of" and inserting in lieu thereof the passage "on the application of";
- (b) by striking out from paragraph (a) of subsection (2) the passage "present the petition" and inserting in lieu thereof the passage "commence proceedings for winding up";
- (c) by striking out from subparagraph (i) of paragraph (a) of subsection (2) the passage "or a private company" wherever it occurs;
- (d) by striking out from subparagraph (ii) of paragraph (a) of subsection (2) the passage "presentation of the petition" and inserting in lieu thereof the passage "commencement of the proceedings";
- (e) by striking out paragraph (b) of subsection (2) and inserting in lieu thereof the following paragraph:—
- (b) proceedings for winding up on the ground of default in lodging the statutory report or in holding the statutory meeting shall not be commenced by any person except a contributory nor before the expiration of fourteen days after the last day on which the meeting ought to have been held;
- (f) by striking out from paragraph (c) of subsection (2) the passage "the petition if presented" and inserting in lieu thereof the passage "the proceedings if commenced";
- and
- (g) by striking out paragraph (d) of subsection (2) and the word "and" immediately preceding that paragraph.

Amendment of principal Act, s. 222—  
Circumstances in which company may be wound up by the Court.

**188.** Section 222 of the principal Act is amended—

- (a) by striking out from paragraph (d) of subsection (1) the passage “or a private company” wherever it occurs;  
and  
(b) by striking out from paragraph (a) of subsection (2) the passage “by leaving at the registered office” and inserting in lieu thereof the passage “by leaving at the registered office or by delivering to the secretary or a director of the company or by otherwise serving on the company, in such manner as the Court approves or directs,”

Repeal of s. 223 of principal Act and enactment of section in its place.

**189.** Section 223 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Commencement of winding up by the Court.

223. (1) Where before the commencement of the proceedings a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and, unless the Court on proof of fraud or mistake thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) In any other case the winding up shall be deemed to have commenced at the time of the commencement of the proceedings for the winding up.

(3) At the time of the commencement, withdrawal or dismissal of proceedings for a winding up the Court shall lodge with the Commission notice, in the prescribed form, of the commencement, withdrawal or dismissal of the proceedings.

Repeal of s. 224 of principal Act and enactment of section in its place.

**190.** Section 224 of the principal Act is repealed and the following section is enacted and inserted in its place:—

As to payment of preliminary costs, etc., by applicant (other than company or liquidator).

224. (1) The persons, other than the company itself or the liquidator thereof, on whose application any winding up order is made, shall at their own cost prosecute all proceedings in the winding up until a liquidator has been appointed under this Part.

(2) The liquidator shall, unless the Court orders otherwise, reimburse the applicant out of the assets of the company the taxed costs incurred by the applicant in any such proceedings.

(3) Where the company has no assets or not sufficient assets, and in the opinion of the Minister any fraud has been committed by any person in the promotion or formation of the company or by any officer of the company in relation to the company since the formation thereof, the taxed costs or so much of them as is not so reimbursed may, with the approval in writing of the Minister, to an extent specified by the Minister but not in any case exceeding three hundred dollars, be reimbursed to the applicant out of moneys provided by Parliament for the purpose.

(4) Where any winding up order is made upon the application of the company or the liquidator thereof, the costs incurred shall, subject to any order of the Court, be paid out of the assets of the company in like manner as if they were the costs of any other applicant.

**191.** Section 225 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Repeal of s. 225 of principal Act and enactment of section in its place.

225. (1) On hearing proceedings for winding up the Court may dismiss the proceedings or adjourn the hearing conditionally or unconditionally or make any interim or other order that it thinks fit, but the Court shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets or that the company has no assets.

Powers of Court on hearing application.

(2) The Court may on the hearing of the proceedings or at any time on motion of the applicant, the company, or any person who has given notice that he intends to appear on the hearing—

(a) direct that any notices be given or any steps taken before or after the hearing;

and

(b) dispense with any notices being given or steps being taken which are required by this Act, or by the rules, or by any prior order of the Court.

(3) Where the proceedings are commenced by members as contributories on the ground that it is just and equitable that the company should be wound up or that the directors have acted in a manner which appears to be unfair or unjust to other members, the Court, if it is of opinion that—

(a) the applicants are entitled to relief either by winding up the company or by some other means;

and

(b) in the absence of any other remedy it would be just and equitable that the company should be wound up,

shall make a winding up order unless it is also of the opinion both that some other remedy is available to the applicants and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

(3a) Notwithstanding any rule of law to the contrary, the Court shall not refuse to make an order for winding up on the application of a person under paragraph (c) of subsection (1) of section 221 of this Act on the ground that if the order were made, no assets of the company would be available for distribution among the contributories.

(4) Where the proceedings are commenced on the ground of default in lodging the statutory report or in holding the statutory meeting, the Court may instead of making a winding up order, direct that the statutory report shall be lodged or that a meeting shall be held and may order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default.

**192.** Sections 226 and 227 of the principal Act are repealed and the following sections are enacted and inserted in their place:—

Repeal of ss. 226 and 227 of principal Act and enactment of sections in their place.

226. At any time after the commencement of proceedings for winding up and before a winding up order has been made, the company or any creditor or contributory may, where any action or proceeding

Power to stay or restrain proceedings against company.

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 as it thinks fit.

Avoidance of dispositions of property, etc.

227. (1) Any disposition of the property of the company including things in action and any transfer of shares or alteration in the status of the members of the company made after the commencement of the winding up by the Court shall unless the Court otherwise orders be void.

(2) Notwithstanding anything to the contrary in subsection (1) of this section, the Court may, where proceedings for winding up have been commenced but a winding up order has not been made, by order—

(a) validate the making after the commencement of the proceedings of any disposition of property of the company;

or

(b) permit the business of the company or any portion of the business of the company to be carried on and such acts as are incidental to the carrying on of the business or portion of the business to be done during the time before a winding up order (if any) is made,

on such terms as it thinks fit.

Amendment of principal Act, s. 229—  
Proceedings to be *lixpendens*.

193. Section 229 of the principal Act is amended by striking out the word “petition” and inserting in lieu thereof the word “proceedings”.

Amendment of principal Act, s. 230—  
Copy of order to be lodged, etc.

194. Section 230 of the principal Act is amended—

(a) by striking out subsections (1) and (2) and inserting in lieu thereof the following subsections:—

(1) Within seven days after the making of a winding up order the applicant shall lodge with the Commission notice of—

(a) the order and its date;

and

(b) the name and address of the liquidator.

(2) The applicant shall within the time prescribed by the rules—

(a) lodge an office copy of the winding up order with the Commission;

(b) cause a copy to be served upon the secretary or manager of the company or upon such other person or in such manner as the Court directs;

and

(c) deliver a copy to the liquidator with a statement that the requirements of this subsection have been complied with.;

(b) by striking out from subsection (4) the passage “on the joint petition” and inserting in lieu thereof the passage “on the joint application”;

and

(c) by striking out from subsection (5) the word “petitioner” and inserting in lieu thereof the word “applicant”.

**195.** Section 231 of the principal Act is repealed and the following sections are enacted and inserted in its place:—

Repeal of  
s. 231 of  
principal Act  
and enactment  
of sections in  
its place.

231. For the purpose of conducting proceedings in winding up companies and assisting the Court therein, the Minister may from time to time appoint as many registered liquidators as he thinks fit to be official liquidators, and may revoke any appointment so made.

Official  
liquidators.

231a. (1) On an order being made for the winding up of a company, the Court may appoint an official liquidator to be liquidator of the company.

Appointment  
of liquidator.

(2) The Court may appoint an official liquidator provisionally at any time after the commencement of proceedings for winding up and before the making of a winding up order or, where there is an appeal against a winding up order, before a decision in the appeal is made, and the provisional liquidator shall have and may exercise such functions and powers as may be prescribed by the rules or as the Court may specify in the order appointing him.

**196.** Section 232 of the principal Act is amended by striking out subsection (3) and inserting in lieu thereof the following subsections:—

Amendment of  
principal Act,  
s. 232—  
General  
provision as to  
liquidators.

(3) A liquidator shall be entitled to receive such salary or remuneration by way of percentage or otherwise as is determined by the Court or—

(a) by agreement between the liquidator and the committee of inspection (if any);

or

(b) failing such agreement or, where there is no committee of inspection, by a resolution passed at a meeting of creditors by a majority of not less than three-fourths in value and one-half in number of the creditors present in person or by proxy and voting at the meeting whose debts have been admitted to proof.

(3a) A meeting of creditors for the purposes of subsection (3) of this section shall be convened by the liquidator by sending to each creditor a notice to which is attached a statement of all receipts and expenditure by the liquidator and of the amount of remuneration sought by him.

Amendment of  
principal Act,  
s. 233—  
Custody and  
vesting of  
company's  
property.

197. Section 233 of the principal Act is amended—

- (a) by striking out from subsection (3) the passage “seven days” and inserting in lieu thereof the passage “fourteen days”;
  - (b) by striking out from paragraph (a) of subsection (3) the word “Registrar” and inserting in lieu thereof the word “Commission”;
- and
- (c) by striking out paragraphs (b) and (c) of subsection (3) and inserting in lieu thereof the following paragraph:—
- and
- (b) where the order relates to land, an office copy of the order with the Registrar-General.

Amendment of  
principal Act,  
s. 234—  
Statement of  
company's  
affairs to be  
submitted to  
liquidator.

198. Section 234 of the principal Act is amended by striking out subsections (2) and (3) and inserting in lieu thereof the following subsections:—

- (2) Except to the extent that the Court otherwise directs, the statement shall be submitted by, and verified by statutory declaration of, such one or more persons belonging to one or more of the following classes as the liquidator, by notice in writing, requires—
  - (a) persons who were at the date of the winding up order the directors and secretary of the company;
  - (b) persons who are or who have been officers of the company;
  - (c) persons who have taken part in the formation of the company at any time within one year before the date of the winding up order;
  - (d) persons who are in the employment of the company, or have been in the employment of the company within that year, and are in the opinion of the liquidator capable of giving the information required;
  - (e) persons who are or have been within that year officers of or in the employment of a corporation which is, or within that year was, an officer of the company to which the statement relates.

(2a) A liquidator may serve a notice on a person under subsection (2) of this section either personally or by sending it by post to the address of that person last known to the liquidator.

(3) A person required to submit a statement referred to in subsection (2) of this section shall, subject to subsection (3a) of this section, submit it not later than fourteen days after the liquidator serves notice of the requirement.

(3a) Where the liquidator believes there are special reasons for so doing, he may, on an application made to him whether before or after the expiration of the time limited by subsection (3) of this section, for the submission by the applicant of a statement under subsection (2) of this section, grant, by notice in writing, an extension of that time.

## (3b) A liquidator—

(a) shall, within seven days after receiving a statement under subsection (2) of this section, cause a copy thereof to be filed with the Court and a copy thereof to be lodged with the Commission;

and

(b) shall, where he gives a notice under subsection (3a) of this section, forthwith send a copy of the notice to the Commission.

**199.** Section 240 of the principal Act is amended—

(a) by striking out from paragraph (a) of subsection (2) the word “Registrar” and inserting in lieu thereof the word “Commission”;

and

(b) by striking out from subsection (6) the word “Registrar” and inserting in lieu thereof the word “Commission”.

Amendment of  
principal Act,  
s. 240—  
As to orders  
for release or  
dissolution.

**200.** Section 243 of the principal Act is amended by striking out from subsection (3) the word “Registrar” and inserting in lieu thereof the word “Commission”.

Amendment of  
principal Act,  
s. 243—  
Power to stay  
winding up.

**201.** Section 250 of the principal Act is amended—

(a) by striking out subsection (6) and inserting in lieu thereof the following subsection:—

(6) Where a person directed to attend before the Court under subsection (1) of this section applies to the Court to be exculpated from any charges made or suggested against him the liquidator shall appear on the hearing of the application and call the attention of the Court to any matters which appear to him to be relevant.;

and

(b) by striking out subsection (8).

Amendment of  
principal Act,  
s. 250—  
Power to  
order public  
examination.

**202.** Section 254 of the principal Act is amended by striking out subsection (2) and inserting in lieu thereof the following subsection:—

(2) A company shall—

(a) within seven days after the passing of a resolution for voluntary winding up lodge a printed copy of the resolution with the Commission;

and

(b) within fourteen days after the passing of the resolution give notice of the resolution in the *Gazette*.

Amendment of  
principal Act,  
s. 254—  
Circumstances  
in which  
company may  
be wound up  
voluntarily.

**203.** Section 257 of the principal Act is amended by striking out from paragraph (c) of subsection (3) the word “Registrar” and inserting in lieu thereof the word “Commission”.

Amendment of  
principal Act,  
s. 257—  
Declaration of  
solvency.

Amendment of principal Act, s. 259—  
Duty of liquidator to call creditors' meetings in case of insolvency.

**204.** Section 259 of the principal Act is amended by striking out subsection (4) and inserting in lieu thereof the following subsection:—

(4) The liquidator, or if another person is appointed by the creditors to be liquidator, the person so appointed shall within seven days after a meeting has been held pursuant to the provisions of subsection (1) of this section lodge with the Commission a notice in the prescribed form and if default is made in complying with this subsection the liquidator or that person shall be guilty of an offence against this Act.

Penalty: Two hundred dollars. Default penalty.

Amendment of principal Act, s. 272—  
Final meeting and dissolution.

**205.** Section 272 of the principal Act is amended—

(a) by striking out from subsection (3) the word “Registrar” and inserting in lieu thereof the word “Commission”;

(b) by striking out from subsection (5) the word “Registrar” and inserting in lieu thereof the word “Commission”;

and

(c) by striking out from subsection (7) the word “Registrar” and inserting in lieu thereof the word “Commission”.

Repeal of s. 276 of principal Act and enactment of section in its place.

**206.** Section 276 of the principal Act is repealed and the following section is enacted and inserted in its place:—

276. Where proceedings in the Court have been commenced for the winding up of a company on the ground that it is unable to pay its debts the company shall not without the leave of the Court resolve that it be wound up voluntarily.

Limitation on right to wind up voluntarily.

Enactment of s. 277a of principal Act.

**207.** The following section is enacted and inserted in the principal Act after section 277 thereof:—

277a. (1) Subject to this section, a person shall not consent to be appointed and shall not act as liquidator of a company if he is not a registered liquidator or a corporation authorized by an Act to act as a liquidator.

Penalty: Two hundred dollars. Default penalty.

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

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

or

(b) if he is—

(i) an officer of the company;

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

or

Leave of Court required to act as liquidator in certain cases.

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

Penalty: Two hundred dollars. Default penalty.

(2) Subsection (1) of this section does not apply to a members' voluntary winding up of an exempt proprietary company and paragraph (b) of subsection (1a) of this section does not apply to a creditors' voluntary winding up if by a resolution carried by a majority of the creditors in number and value present in person or by proxy and voting at a meeting of which seven days' notice has been given to every creditor stating the object of the meeting it is determined that that paragraph shall not so apply.

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

(4) A person shall not consent to be appointed, and shall not act, as liquidator of a company if he is an undischarged bankrupt or a person who has made any arrangement or composition with his creditors generally and has not been released from his indebtedness.

Penalty: Two hundred dollars. Default penalty.

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

208. Section 278 of the principal Act is amended by striking out subsection (2) and inserting in lieu thereof the following subsection:—

Amendment of principal Act s. 278—  
Control of Court over liquidators.

(2) The Commission or the Board may report to the Court any matter which in its opinion is a misfeasance, neglect or omission on the part of the liquidator and the Court may order the liquidator to make good any loss which the estate of the company has sustained thereby and make such other order as it thinks fit.

209. Section 280 of the principal Act is amended—

Amendment of principal Act, s. 280—  
Notice of appointment and address of liquidator.

(a) by striking out from subsection (1) the word "Registrar" wherever it occurs and inserting in lieu thereof, in each case, the word "Commission";

and

(b) by striking out from subsection (2) the word "Registrar" and inserting in lieu thereof the word "Commission".

210. Section 281 of the principal Act is amended—

Amendment of principal Act, s. 281—  
Liquidator's accounts.

(a) by striking out subsections (1) and (2) and inserting in lieu thereof the following subsections:—

(1) Every liquidator shall, within one month after the expiration of the period of six months from the date of his appointment and of every subsequent period of six months

and in any case within one month after he ceases to act as liquidator and forthwith after obtaining an order of release, lodge with the Commission in the prescribed form and verified by statutory declaration an account of his receipts and payments and a statement of the position in the winding up.

Penalty: One hundred dollars. Default penalty.

(2) The Commission may cause the account to be audited by a registered company auditor, and for the purpose of the audit the liquidator shall furnish the auditor with such vouchers and information as he requires, and the auditor may at any time require the production of and inspect any books or accounts kept by the liquidator.;

and

(b) by inserting after subsection (5) the following subsection:—

(6) Notwithstanding the provisions of subsection (1) of this section, the accounts referred to in that subsection may be lodged within such times as may be prescribed in lieu of the times specified in that subsection but so that accounts are lodged at least twice a year.

Amendment of  
principal Act,  
s. 282—  
Liquidator to  
make good  
defaults.

**211.** Section 282 of the principal Act is amended—

(a) by striking out from subsection (1) the word “Registrar” and inserting in lieu thereof the word “Commission”;

and

(b) by striking out subsection (2).

Amendment of  
principal Act,  
s. 284—  
Books of  
company.

**212.** Section 284 of the principal Act is amended by striking out subsection (3) and inserting in lieu thereof the following subsection:—

(3) Notwithstanding subsection (2) of this section, when a company has been wound up the books and papers referred to in subsection (1) of this section may be destroyed within a period of five years after the dissolution of the company—

(a) in the case of a winding up by the Court, in accordance with the directions of the Court;

(b) in the case of a members’ voluntary winding up, as the company by resolution directs;

and

(c) in the case of a creditors’ voluntary winding up, as the committee of inspection or, if there is no such committee, as the creditors of the company direct.

Amendment of  
principal Act,  
s. 286—  
Unclaimed  
assets.

**213.** Section 286 of the principal Act is amended by striking out the word “Registrar” wherever it occurs in subsections (1), (2), (3), (6), (7) and (8) and inserting in lieu thereof, in each case, the word “Commission”.

**214.** Section 287 of the principal Act is amended—

(a) by striking out from subsection (1) the word “Registrar” and inserting in lieu thereof the word “Commission”;

and

(b) by striking out from subsection (2) the word “Registrar” wherever it occurs and inserting in lieu thereof, in each case, the word “Commission”.

Amendment of principal Act, s. 287—  
Expenses of winding up where assets insufficient.

**215.** Section 290 of the principal Act is repealed.

Repeal of s. 290 of principal Act.

**216.** Section 291 of the principal Act is amended by inserting after subsection (2) the following subsections:—

Amendment of principal Act, s. 291—  
Proof of debts.

(3) The amount of a debt of a company (including a debt that is for, or includes, interest) is to be computed for the purposes of the winding up—

(a) where the winding up is a winding up under an order of the Court of a company that has not previously commenced to be wound up voluntarily—as at the date of the order for winding up;

or

(b) in any other case—as at the date of the commencement of the winding up.

(4) Subsection (3) of this section does not apply to an amount required to be paid under subsection (1a) of section 292 of this Act.

**217.** Section 292 of the principal Act is amended—

Amendment of principal Act, s. 292—  
Priorities.

(a) by striking out subsections (1), (2), (3) and (4) and inserting in lieu thereof the following subsections:—

(1) Subject to the provisions of this Act, in a winding up there shall be paid in priority to all other unsecured debts—

(a) firstly, the costs and expenses of the winding up including the taxed costs of an applicant payable under section 224 of this Act the remuneration of the liquidator and the costs of any audit carried out pursuant to section 281 of this Act;

(aa) secondly, where the winding up of a company commences within two months after the determination of a period of official management of that company the costs of the official management properly and reasonably incurred by the official manager during that period of official management including the remuneration of the official manager, 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 of this Act;

- (ab) thirdly, where the winding up of a company commences within two months after the termination of a period of official management of that company the debts of the company properly and reasonably incurred by the official manager in the conduct by him of the business of the company during the period of official management;
- (b) fourthly, all wages or salary (whether or not earned wholly or in part by way of commission not being an overriding commission) including any amount payable by way of allowance or reimbursement under any contract of employment or award or agreement regulating conditions of employment, of any employee not exceeding one thousand five hundred dollars whether for time or piece work in respect of services rendered by him to the company before the relevant date;
- (c) fifthly, all amounts due in respect of workers' compensation under any law relating to workers' compensation accrued before the relevant date;
- (d) sixthly, all amounts due on or before the relevant date to or in respect of an employee of the company (whether remunerated by way of salary, wages, commission or otherwise) by virtue of—
- (a) a contract of employment;
  - or
  - (b) a law of the Commonwealth, or of a State, or of a Territory of the Commonwealth,
- relating to long service leave, extended leave, annual leave, recreation leave or sick leave;
- (e) seventhly, the amount of all municipal or other local rates due from the company at the relevant date and having become due and payable within the twelve months next preceding that date, the amount of all land tax and income tax assessed under any Act or Acts of the Commonwealth before the relevant date and not exceeding in the whole one year's assessment and the amount of tax, within the meaning of the Pay-roll Tax Act, 1971-1977, payable by the company under that Act at the relevant date and which had become due and payable within twelve months next preceding that date; and any amount due and payable by way of repayment of any advance made to the company, or in payment of any amount owing by the company for goods supplied or services rendered to it under any Act or Acts of the Commonwealth or law of a Territory of the Commonwealth relating to or providing for the improvement, development or settlement of land or the aid, development or encouragement of mining;

and

(f) eighthly, any amount that, pursuant to an order under subsection (2) of section 179 of this Act, or under section 24 of the Securities Industry Act, 1979, the company was, at the relevant date, under an obligation to pay.

(1a) Where, after the relevant date, an order is made under section 179 of this Act or under section 24 of the Securities Industry Act, 1979, against a company that is being wound up, the amount that pursuant to the order the company is liable to pay shall be admissible to proof against the company and—

(a) where all the debts that under subsection (1) of this section have priority over all other unsecured debts have not been paid at the time when the amount has been admitted to proof—shall be paid in priority to all other unsecured debts except those having priority under subsection (1) of this section;

and

(b) where all the debts that under subsection (1) of this section have priority over all other unsecured debts have been paid at the time when the amount is admitted to proof—shall be paid in priority to all other unsecured debts that, at that time, have not been paid.

(1ab) Where a copy of an order referred to in subsection (1a) of this section against a company is served on the liquidator of the company and the liquidator has not admitted to proof the amount that, pursuant to the order, the company is liable to pay, the liquidator—

(a) shall serve notice on the Minister that he has not admitted that amount to proof;

and

(b) shall not make a payment or further payment out of the property of the company (other than payments of debts that, under subsection (1) of this section have priority over all other unsecured debts) until the expiration of seven days after service of that notice.

(1b) Where a contract of employment with a company being wound up was subsisting immediately before the relevant date, the employee under the contract shall, whether or not he is a person referred to in subsection (1c) of this section, be entitled to payment under subsection (1) of this section as if his services with the company had been terminated by the company on the relevant date.

(1c) Where, for the purposes of the winding up of a company, a liquidator employs a person whose services with the company had been terminated by reason of the winding up, that person shall, for the purpose of calculating any leave entitlement, be deemed, while the liquidator employs him for those purposes, to be employed by the company.

(1d) Subject to subsection (1e) of this section where, after the relevant date, an amount in respect of long service leave or extended leave becomes due to or in respect of a person referred to in subsection (1c) of this section in respect of the employment so referred to, the amount is a cost of the winding up.

(1e) Where, at the relevant date, the length of qualifying service of a person employed by a company that is being wound up is insufficient to entitle him to any amount in respect of long service leave or extended leave but, by the operation of subsection (1c) of this section, he becomes entitled to such an amount after that date, that amount—

(a) is a cost of the winding up to the extent of an amount that bears to that amount the same proportion as the length of his qualifying service after that relevant date bears to the total length of his qualifying service;

and

(b) shall, to the extent of the balance thereof, be deemed to be an amount referred to in paragraph (d) of subsection (1) of this section.

(2) After provision is made for the costs and expenses referred to in paragraph (a) of subsection (1) of this section, the debts of a class referred to in a paragraph of that subsection, paragraph (a) excepted, shall rank equally between themselves, and shall be paid in full, unless the property of the company is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) Where any payment has been made by the company on account of wages or salary or by virtue of—

(a) a contract of employment;

or

(b) the law of the Commonwealth, or of a State, or of a Territory of the Commonwealth,

relating to long service leave, extended leave, annual leave, recreation leave or sick leave and the payment was made out of money advanced by a person for that purpose, the person by whom the money was advanced shall, in a winding up, have a right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which the person who received the payment would have been entitled to priority in the winding up has been diminished by reason of the payment, and shall have the same right of priority in respect of that amount as the person who received the payment would have had if the payment had not been made.

(4) So far as the assets of the company available for payment of general creditors are insufficient to meet—

(a) any preferential debt specified in paragraphs (b) and (d) of subsection (1) of this section;

(b) any amount that, pursuant to subsection (1d) or (1e) of this section, is a cost of the winding up, being an amount that, if it had been payable on or before the relevant date, would have been a preferential debt specified in paragraph (b) or (d) of subsection (1) of this section;

and

(c) any amount payable in priority by virtue of subsection (3) of this section,

those debts shall have priority over the claims of the holders of debentures under any floating charge created by the company, and shall be paid accordingly out of any property comprised in or subject to that charge.;

and

(b) by striking out subsections (8), (9) and (10) and inserting in lieu thereof the following subsections:—

(8) Notwithstanding anything in subsection (1) of this section—

(a) paragraph (c) of that subsection shall not apply in relation to the winding up of a company in any case where the company is being wound up voluntarily merely for the purpose of reconstruction or of amalgamation with another company and the right to the compensation has on the reconstruction or amalgamation been preserved to the person entitled thereto, or where the company has entered into a contract with an insurer in respect of any liability under any law relating to workers' compensation;

and

(b) where a company has given security for the payment or repayment of any amount to which paragraph (e) of that subsection relates, that paragraph shall apply only in relation to the balance of any such amount remaining due after deducting therefrom the net amount realised from such security.

(9) Where an amount due in respect of workers' compensation under any law relating to workers' compensation is a weekly payment, that amount shall, for the purposes of paragraph (c) of subsection (1) of this section, be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if an application were made for that purpose under that law.

(10) Where in any winding up assets have been recovered under an indemnity for costs of litigation given by certain creditors, or have been protected or preserved by the payment of moneys or the giving of indemnity by creditors, or where expenses in relation to which a creditor has indemnified a liquidator, have been recovered the Court may make such order as it deems just with respect to the distribution of those

assets and the amount of those expenses so recovered with a view to giving those creditors an advantage over others in consideration of the risk run by them in so doing.

(11) The liquidator shall, within one month of the relevant date, call a meeting of creditors entitled to priority by virtue of paragraphs (b) or (d) of subsection (1) of this section or by virtue of subsections (3) or (5) of this section—

(a) to inform them of their rights relating to payment of debts owed to them;

and

(b) as far as he is able, to inform them of the time at which payments in respect of those debts are likely to be made.

(12) In this section—

(a) “employee” includes a former employee;

(b) “floating charge” includes a charge conferring a floating security at the time of its creation which has become a fixed or specific charge;

and

(c) “the relevant date” means—

(i) in the case of a company ordered to be wound up by the Court which has not previously commenced to be wound up voluntarily—the date of the winding up order;

and

(ii) in any other case—the date of the commencement of the winding up.

Amendment of  
principal Act,  
s. 293—  
Undue  
preference.

**218.** Section 293 of the principal Act is amended by striking out the passage “presentation of the petition”, wherever it occurs, and inserting in lieu thereof, in each case, the passage “commencement of the proceedings”.

Amendment of  
principal Act,  
s. 296—  
Disclaimer of  
onerous  
property.

**219.** Section 296 of the principal Act is amended by striking out subsection (6) and inserting in lieu thereof the following subsection:—

(6) The Court may, on the application of a person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any person entitled thereto, or to whom it seems just that the property should be delivered by way of compensation for such liability as aforesaid or a trustee for him, and on such terms as the Court thinks just, and on any such vesting order being made and an office copy thereof being lodged with the Commission and, if the order relates to land, with the Registrar-General the property comprised therein shall vest accordingly in the person therein named in that behalf without any further conveyance or assignment.

**220.** Section 306 of the principal Act is amended—

- (a) by striking out the word “Minister” wherever it occurs in subsections (1) and (2) and inserting in lieu thereof, in each case, the word “Commission”;
- (b) by striking out from subsection (2) the word “he” thirdly occurring and inserting in lieu thereof the passage “the Commission”;
- (c) by striking out from subsections (2) and (3) the word “him” wherever it occurs and inserting in lieu thereof, in each case, the passage “the Commission”;
- (d) by striking out from subsection (3) the word “Registrar” wherever it occurs and inserting in lieu thereof, in each case, the word “Commission”;
- and
- (e) by striking out subsections (4), (5), (6), (7) and (8) and inserting in lieu thereof the following subsections:—

Amendment of  
principal Act,  
s. 306—  
Prosecution of  
delinquent  
officers and  
members of  
company.

(4) Where any report is made under subsection (2) or subsection (3) of this section the Commission may, if the Commission thinks fit, investigate the matter and may apply to the Court for an order conferring on the Commission or any person designated by the Commission for the purpose with respect to the company concerned all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the Court, but if it appears to the Commission that the case is not one in which the Commission ought to take proceedings, the Commission shall inform the liquidator accordingly, and thereupon, subject to the previous approval of the Court, the liquidator may himself take proceedings against the offender and for that purpose the Minister shall be deemed to have given his written consent to the proceedings being taken by the liquidator.

(5) If it appears to the Court in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty as aforesaid and that no report with respect to the matter has been made by the liquidator to the Commission, the Court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of subsection (2) of this section.

(6) If, where any matter is reported or referred to the Commission under this section, the Commission is of the opinion that an offence may have been committed and that the case is one in which a prosecution ought to be instituted, the Commission may institute a prosecution accordingly.

(6a) Where the Commission has formed the opinion referred to in subsection (6) of this section the Commission may, by notice in writing given before or after the institution of a prosecution in accordance with that subsection, require an officer of the company to which the matter reported or referred

to the Commission relates (not being an officer who is or, in the opinion of the Commission, is likely to be a defendant in the proceedings) to give all assistance in connection with the prosecution or proposed prosecution that he is reasonably able to give.

(7) For the purposes of subsection (6a) of this section “officer” in relation to a company means officer as defined in subsection (1) of section 5 of this Act and includes—

(a) a person who has at any time been an officer, as so defined;

and

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

(8) Where a person to whom a notice has been given under subsection (6a) of this section fails to comply with a requirement specified in the notice the Court may, on the application of the Commission, direct that person to comply with the requirement.

(8a) Where an application is made under subsection (8) of this section with respect to a liquidator the Court may, unless it appears that the failure to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.

Amendment of principal Act, s. 307—  
Power of Court to declare dissolution of company void.

**221.** Section 307 of the principal Act is amended by striking out from subsection (2) the word “Registrar” and inserting in lieu thereof the word “Commission”.

Repeal of s. 308 of principal Act and enactment of section in its place.

**222.** Section 308 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Power of Commission to strike defunct company off register.

308. (1) Where the Commission has reasonable cause to believe that a company is not carrying on business or is not in operation, the Commission may send to the company by post a letter to that effect and stating that if an answer showing cause to the contrary is not received within one month from the date thereof a notice will be published in the *Gazette* with a view to striking the name of the company off the register.

(2) Unless the Commission receives an answer within one month from the date of the letter to the effect that the company is carrying on business or is in operation the Commission may publish in the *Gazette* and send to the company by registered post a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will unless cause is shown to the contrary be struck off the register and the company will be dissolved.

(3) If in any case where a company is being wound up the Commission has reasonable cause to believe that—

(a) no liquidator is acting;

(b) the affairs of the company are fully wound up and for a period of six months the liquidator has been in default in lodging any return required to be made by him;

or

(c) the affairs of the company have been fully wound up under Division II of this Part and there are no assets or the assets available are not sufficient to pay the costs of obtaining an order of the Court dissolving the company,

the Commission may publish in the *Gazette* and send to the company or the liquidator, if any, a notice to the same effect as that referred to in subsection (2) of this section.

(4) At the expiration of the time mentioned in the notice the Commission may, unless cause to the contrary is previously shown, strike the name of the company off the register, and shall publish notice thereof in the *Gazette* and on the publication in the *Gazette* of this notice the company shall be dissolved; but

(a) the liability, if any, of every officer and member of the company shall continue and may be enforced as if the company had not been dissolved;

and

(b) nothing in this subsection shall affect the power of the Court to wind up a company the name of which has been struck off the register.

(5) If any person feels aggrieved by the name of the company having been struck off the register, the Court on an application made by the person at any time within fifteen years after the name of the company has been so struck off may, if satisfied that the company was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the name of the company be restored to the register, order the name of the company to be restored to the register, and upon an office copy of the order being lodged with the Commission the company shall be deemed to have continued in existence as if its name had not been struck off, and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(6) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office or, if no office has been registered, to the care of some officer of the company, or if there is no officer of the company whose name and address are known to the Commission may be sent to each of the persons who subscribed the memorandum of the company addressed to him at the address mentioned in the memorandum.

**223.** Section 309 of the principal Act is amended—

(a) by striking out from subsection (1) the word “Registrar” wherever it occurs and inserting in lieu thereof, in each case, the word “Commission”;

(b) by striking out from subsection (2) the word “Registrar” and inserting in lieu thereof the word “Commission”;

Amendment of  
principal Act,  
s. 309—  
Commission  
to act as  
representative  
of defunct  
company in  
certain events

(c) by striking out from subsection (2) the passage “or sign”;

and

(d) by striking out the word “he” and inserting in lieu thereof the passage “the Commission”.

Amendment of  
principal Act,  
s. 310—  
Outstanding  
assets of  
defunct  
company to  
vest in  
Commission.

**224.** Section 310 of the principal Act is amended—

(a) by striking out from subsection (1) the word “Registrar” and inserting in lieu thereof the word “Commission”;

(b) by striking out from subsection (2) the word “Registrar” and inserting in lieu thereof the word “Commission”;

and

(c) by striking out from subsection (2) the word “himself” and inserting in lieu thereof the word “itself”.

Amendment of  
principal Act,  
s. 311—  
Outstanding  
interests in  
property how  
disposed of.

**225.** Section 311 of the principal Act is amended—

(a) by striking out from subsection (1) the word “Registrar” wherever it occurs and inserting in lieu thereof, in each case, the word “Commission”;

(b) by striking out from subsection (1) the word “him” and inserting in lieu thereof the passage “the Commission”;

(c) by striking out from subsection (1) the passage “he sees fit” and inserting in lieu thereof the passage “the Commission thinks fit”;

(d) by striking out from subsection (2) the word “Registrar” and inserting in lieu thereof the word “Commission”;

(e) by striking out from subsection (2) the passage “he thinks” wherever it occurs and inserting in lieu thereof, in each case, the passage “the Commission thinks”;

(f) by striking out from subsection (3) the word “Registrar” and inserting in lieu thereof the word “Commission”;

(g) by striking out from subsection (3) the passage “upon him” and inserting in lieu thereof the passage “upon the Commission”;

(h) by striking out from subsection (4) the word “Registrar” and inserting in lieu thereof the word “Commission”;

(i) by striking out from subsection (4) the passage “on him” and inserting in lieu thereof the passage “on the Commission”;

(j) by striking out from subsection (4) the passage “in his hands”;

and

(k) by striking out from subsection (4) the word “he” and inserting in lieu thereof the passage “the Commission”.

Amendment of  
principal Act,  
s. 312—  
Liability of  
Commission  
and Crown as  
to property  
vested in the  
Commission.

**226.** Section 312 of the principal Act is amended by striking out the word “Registrar” wherever it occurs and inserting in lieu thereof, in each case, the word “Commission”.

Amendment of  
principal Act,  
s. 313—  
Accounts and  
audit.

**227.** Section 313 of the principal Act is amended by striking out subsection (1) and inserting in lieu thereof the following subsection:—

(1) The Commission shall—

(a) record a statement of any property got in by the Commission or under the control of the Commission or, to the

knowledge of the Commission, vested in the Commission by operation of this Subdivision and of the dealings of the Commission therewith;

(b) keep accounts of all moneys arising therefrom and of how they have been disposed of;

and

(c) keep all accounts, vouchers, receipts and papers relating to such property and moneys.

**228.** Section 314 of the principal Act is amended by striking out from subsection (2) the passage “and subject to this Division, those provisions shall apply to the winding up of an unregistered company as if it were a company”.

Amendment of principal Act, s. 314—  
Unregistered company.

**229.** Section 315 of the principal Act is amended by striking out from subsection (3) the passage “so far as its assets in the State are concerned,”.

Amendment of principal Act, s. 315—  
Winding up of unregistered companies.

**230.** Section 334 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Repeal of s. 334 of principal Act and enactment of section in its place.

**334.** (1) In this Division, unless the contrary intention appears—

Interpretation.

“investment company” means a corporation for the time being declared by order of the Minister published in the *Gazette* to be an investment company:

“net tangible assets” means tangible assets at book values less total liabilities at book values and less any aggregate amount by which the book value of the marketable securities held by the corporation exceeds their market value.

(2) The Minister may, by order published in the *Gazette*, declare to be an investment company any corporation which is engaged primarily in the business of investment in marketable securities for the purpose of revenue and for profit and not for the purpose of exercising control.

(3) The Minister may, by order published in the *Gazette*, vary or revoke any previous order under this section.

**231.** Section 339 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Repeal of s. 339 of principal Act and enactment of section in its place.

**339.** No investment company shall purchase or after the expiration of three years after it is declared to be an investment company hold any shares in or debentures of—

Not to hold shares in other investment companies.

(a) any other investment company;

or

(b) any corporation incorporated in any other State or Territory of the Commonwealth or in New Zealand which is engaged primarily in the business of investment in marketable securities for the purpose of revenue and for profit and not for the purpose of exercising control and which is specified by order of the Minister published in the *Gazette* for the purposes of this section.

Amendment of  
principal Act,  
s. 346—  
Documents,  
etc., to be  
lodged by  
foreign  
companies.

**232.** Section 346 of the principal Act is amended—

(a) by striking out subsection (1) and inserting in lieu thereof the following subsections:—

(1) Every foreign company shall, within one month after it establishes a place of business or commences to carry on business within the State, lodge with the Commission for registration—

- (a) a certified copy of the certificate of its incorporation or registration in its place of incorporation or origin or a document of similar effect;
  - (b) a certified copy of its charter, statute or memorandum and articles or other instrument constituting or defining its constitution;
  - (c) a list of its directors containing similar particulars with respect to its directors as are by this Act required to be contained in the register of the directors, managers and secretaries of a company incorporated under this Act;
  - (d) where the list includes directors resident in the State who are members of the local board of directors a memorandum duly executed by or on behalf of the foreign company stating the powers of the local directors;
  - (e) a memorandum of appointment or power of attorney under the seal of the foreign company or executed on its behalf in such manner as to be binding on the company and, in either case, verified in the prescribed manner, stating the name and address of one or more persons resident in this State, not including a foreign company, authorized to accept on its behalf service of process and any notices required to be served on the company;
  - (f) notice of the situation of its registered office in the State;
- and
- (g) a statutory declaration in the prescribed form made by the agent of the company,

and the Commission shall register the company under this Division by registration of the documents.

(1a) A foreign company which has established a place of business or commenced to carry on business within the State may lodge with the Commission a notice of the hours (being not less than three) between the hours of 9 o'clock in the morning and 5 o'clock in the evening each day, Saturdays, Sundays and holidays excepted, during which the principal office of the foreign company in the State is open and accessible to the public.;

(b) by striking out from subsection (2) the word “Registrar” wherever it occurs and inserting in lieu thereof, in each case, the word “Commission”;

(c) by striking out subsection (4) and inserting in lieu thereof the following subsection:—

(4) A foreign company shall have a registered office within the State to which all communications and notices may be addressed and which shall be open and accessible to the public—

(a) where a notice has been lodged by the foreign company with the Commission under subsection (1a) of this section—for such hours (being not less than three) between the hours of 9 o’clock in the morning and 5 o’clock in the evening each day, Saturdays, Sundays and holidays excepted, as are specified in the later of that notice and a notice lodged by the foreign company with the Commission under subsection (1a) of section 347 of this Act;

or

(b) where a notice has not been lodged by the foreign company under subsection (1a) of this section—for not less than five hours between 10 o’clock in the morning and 4 o’clock in the afternoon of each day, Saturdays, Sundays and holidays excepted.;

(d) by striking out from subsection (6) the word “Registrar” and inserting in lieu thereof the word “Commission”;

and

(e) by striking out subsections (9) and (10) and inserting in lieu thereof the following subsections:—

(9) On the registration of a foreign company under this Division or the lodging with the Commission of particulars of a change or alteration in a matter referred to in paragraph (f) of section 347 of this Act, the Commission shall issue a certificate in the prescribed form under the seal of the Commission which certificate shall be *prima facie* evidence in all courts of the particulars mentioned in the certificate.

(10) Nothing in this section shall require a foreign company which was registered under the repealed Act immediately before the commencement of this Act as a foreign company to register pursuant to this section.

233. Section 347 of the principal Act is amended—

(a) by striking out subsection (1) and inserting in lieu thereof the following subsections:—

(1) Where any change or alteration is made in—

(a) the charter, statutes, memorandum or articles of the foreign company or other instrument lodged with the Commission;

Amendment of  
principal Act,  
s. 347—  
Return to be  
filed where  
documents,  
etc., altered.

- (b) the directors of the foreign company;
  - (c) the agent or agents of the foreign company or the address of any agent;
  - (d) the situation of the registered office of the foreign company in the State;
  - (e) the address of the registered office of the foreign company in its place of incorporation or origin;
  - (f) the name of the foreign company;
- or
- (g) the powers of any directors resident in the State who are members of the local board of directors of the foreign company,

the foreign company shall within one month or within such further period as the Commission in special circumstances allows after the change or alteration lodge with the Commission particulars of the change or alteration and such documents as the regulations require.

(1a) Where a notice has been lodged by a foreign company under subsection (1a) of section 346 of this Act, the foreign company shall, where there is a change in the hours during which the principal office of the foreign company is open and accessible to the public, lodge with the Commission a notice giving particulars of the change within one month or such further period as the Commission in special circumstances allows after the change.;

and

- (b) by striking out the word "Registrar" wherever it occurs in subsections (2) and (3) and inserting in lieu thereof, in each case, the word "Commission".

Amendment of  
principal Act,  
s. 348—  
Balance-  
sheets.

**234. Section 348 of the principal Act is amended—**

- (a) by striking out from subsection (1) the word "Registrar" and inserting in lieu thereof the word "Commission";
- (b) by striking out from subsection (2) the word "Registrar" wherever it occurs and inserting in lieu thereof, in each case, the word "Commission";
- (c) by striking out from subsection (2) the passage "if he is of the opinion" and inserting in lieu thereof the passage "if of the opinion";
- (d) by striking out from subsection (4) the word "Registrar" and inserting in lieu thereof the word "Commission";
- (e) by striking out subsection (5) and inserting in lieu thereof the following subsection:—

(5) Except as provided in subsections (6) and (7) of this section, this section does not apply to or in relation to a foreign company—

- (a) which is an unlimited private company under the law of the United Kingdom relating to companies and is exempt under that law from lodging accounts with the Registrar of Companies holding office under that law;
- (b) which is included in a class of companies incorporated under the law of another State, Territory or country, being a class of companies which the Governor has declared by order published in the *Gazette* to be a class of companies of a kind the same or substantially the same as exempt proprietary companies under this Act;
- (c) which is included in a class of companies incorporated under the law of another State, Territory or country, being a class of companies which the Governor has declared by order published in the *Gazette* to be a class of companies of a kind the same or substantially the same as proprietary companies under this Act where no beneficial interest in any share in the company is held, directly or indirectly, otherwise than by a natural person;
- (d) which is a corporation incorporated in the United Kingdom or in any other State or Territory of the Commonwealth and which has, by the law of the place of its incorporation, exemptions and privileges similar to those which are provided for in section 24 of this Act;

or

- (e) which is an association incorporated in any other State or Territory of the Commonwealth under an enactment of that place which makes special provision for the incorporation of associations which are formed for the purpose of providing recreation or amusement or promoting commerce, industry, art, science, religion, charity, pension or superannuation schemes or any other object useful to the community and which are by their constitutions prohibited from the payment of dividends to their members.;

and

- (f) by striking out from subsections (6) and (7) the word "Registrar" wherever it occurs and inserting in lieu thereof, in each case, the word "Commission".

235. Section 349 of the principal Act is repealed.

Repeal of  
s. 349 of  
principal Act.

236. Section 352 of the principal Act is amended—

Amendment of  
principal Act,  
s. 352—  
Ceasing of  
business in  
the State.

- (a) by striking out from subsection (1) the word "Registrar" wherever it occurs and inserting in lieu thereof, in each case, the word "Commission";

(b) by striking out from paragraph (a) of subsection (2) the word “Registrar” wherever it occurs and inserting in lieu thereof, in each case, the word “Commission”;

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

(2a) 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 Commission in special circumstances allows, lodge or cause to be lodged with the Commission notice in the prescribed form of that fact.;

(d) by striking out paragraph (c) of subsection (3) and inserting in lieu thereof the following paragraph:—

(c) shall, unless otherwise ordered by the Court, only recover and realise the assets of the foreign company in the State and shall pay the net amount so recovered and realised to the liquidator of that foreign company for the place where it was formed or incorporated.;

and

(e) by striking out from subsections (5) and (6) the word “Registrar” wherever it occurs and inserting in lieu thereof, in each case, the word “Commission”.

Repeal of  
s. 352a of  
principal Act.

237. Section 352a of the principal Act is repealed.

Amendment of  
principal Act,  
s. 353—  
Restriction on  
use of certain  
names.

238. Section 353 of the principal Act is amended by striking out the word “Registrar” wherever it occurs in subsections (1) and (2) and inserting in lieu thereof, in each case, the word “Commission”.

Amendment of  
principal Act,  
s. 354—  
The branch  
register.

239. Section 354 of the principal Act is amended—

(a) by striking out subsection (6) and inserting in lieu thereof the following subsection:—

(6) Where a foreign company opens a branch register in the State it shall within fourteen days after the opening thereof lodge with the Commission notice of that fact specifying the address where the register is kept.;

(b) by striking out from subsection (7) the word “Registrar” and inserting in lieu thereof the word “Commission”;

and

(c) by striking out subsection (8) and inserting in lieu thereof the following subsections:—

(8) Where a company or corporation is entitled pursuant to a law of the place of incorporation of a foreign company that corresponds to section 180x or section 185 of this Act to give notice to a dissenting offeree or to a dissenting shareholder

in that foreign company that it desires to acquire any of his shares registered on a branch register kept in the State, this section shall cease to apply to that foreign company until—

(a) the shares have been acquired;

or

(b) that company or corporation has ceased to be entitled to acquire the shares.

(9) In this section and in sections 355 to 360 of this Act, a reference to shares shall, with necessary adaptations, be construed as including a reference to debentures and a reference to a member shall likewise be construed as including a reference to a debenture holder.

**240.** Section 362 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Repeal of s. 362 of principal Act and enactment of section in its place.

362. (1) A document may be served on a company by leaving it at or sending it by post to the registered office of the company.

Service of documents on company.

(2) For the purposes of subsection (1) of this section, the situation of the registered office of a company shall be deemed to be the address notified under subsection (1) of section 112 of this Act or, where notice of change of address has been given under subsection (1b) of section 112 of this Act, the address specified in that notice from the date specified in that notice as the date on which the change of address occurs.

(3) Where a liquidator of a company has been appointed, a document may be served on the company by leaving it at or sending by post to the last address of the office of the liquidator notice of which has been lodged with the Commission.

**241.** Section 363 of the principal Act is amended by striking out subsection (2).

Amendment of principal Act, s. 363—  
Security for costs.

**242.** Section 364 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Repeal of s. 364 of principal Act and enactment of section in its place.

364. (1) Where a person has been shown in the register of members of a company as a member of the company for a period of not less than ten years and the company has for a period of not less than ten years—

Disposal of shares of shareholder whose whereabouts unknown.

(a) had reasonable grounds for believing that that person had not during that last-mentioned period resided at the address shown in the register as his address;

and

(b) had, on each occasion during that last-mentioned period when, whether or not in accordance with a provision of this Act, it sought to communicate with that person, been unable after the exercise of reasonable diligence so to do,

the company may cause an advertisement to be published in a daily newspaper circulating in the place shown in the register of members as the address of the shareholder stating that the company intends after the expiration of one month from the date of the advertisement to apply to the Treasurer for permission to transfer to the Treasurer the shares held by the shareholder in the company and any rights to subscribe for shares held in right of those shares.

(2) If after the expiration of one month from the date of the advertisement, the whereabouts of the shareholder remain unknown, the company may apply to the Treasurer for permission to transfer to the Treasurer the shares held by the shareholder in the company and any rights to subscribe for shares held in right of those shares.

(3) The application shall be accompanied by a statutory declaration by a director or secretary or manager of the company in the prescribed form and a copy of the advertisement referred to in subsection (1) of this section.

(4) Where the Treasurer grants permission for the shares and rights (if any) to be transferred, the company may transfer the shares and any rights to the Treasurer and for that purpose may execute for and on behalf of the shareholder a transfer of the shares and rights (if any) to the Treasurer.

(5) The Treasurer shall sell or dispose of any shares or rights transferred to him under subsection (4) of this section or any shares or other property received by him in exchange for any shares or rights so transferred in such manner and at such time as he thinks fit and shall deal with the proceeds of the sale as if they were moneys paid to him pursuant to the law relating to unclaimed moneys.

(6) The Treasurer shall not be liable for any loss or damage suffered by any person arising out of the transfer, sale or disposal of any shares, rights or other property under this section or a corresponding previous enactment.

(7) The Treasurer shall not be subject to any obligation—

(a) to pay any call;

(b) to make any contribution to the debts and liabilities of the company;

or

(c) to discharge any other liability,

in respect of any shares transferred to him under this section, whether the obligation arises before or after the date of the transfer, and shall not be liable to be sued for any calls or contribution or other liability, but this subsection does not affect the right of any company to forfeit any share upon which any call or contribution remains unpaid or any liability undischarged.

(8) A reference in this section to any period of not less than ten years is a reference to a period that commenced before or after the commencement of the Companies Act Amendment Act, 1979.

**244.** Section 367a of the principal Act is amended—

- (a) by striking out from subsection (1) the passage “Attorney-General” wherever it occurs and inserting in lieu thereof, in each case, the word “Commission”;
- (b) by striking out from subsection (6) the passage “explain or qualify any answer given by him” and inserting in lieu thereof the passage “explain his conduct and dealings as an officer of the company or to explain or qualify any answer given by him”;
- (c) by striking out paragraph (d) of subsection (7) and inserting in lieu thereof the following paragraph:—
- (d) may be inspected and copied by the person examined, the Minister, the Commission or applicant or, with the consent of the Court, by any creditor or member of the company.;
- and
- (d) by striking out subsection (8).

Amendment of principal Act, s. 367a—  
Power to examine defaulting officers.

**245.** Section 367b of the principal Act is repealed and the following section is enacted and inserted in its place:—

367b. (1) Where it appears to the Commission or a prescribed person that any other person who has taken part in the formation, promotion, administration, management or winding up of a company to which this section applies—

- (a) has misapplied or retained or become liable or accountable for any money or property of the company;
- or
- (b) has been guilty of any negligence, default, breach of duty or breach of trust in relation to the company,

the Commission or prescribed person may apply to the Court to examine the conduct of that other person or for an order that that other person—

- (c) repay or restore the money or property or such part thereof as the Court thinks fit together with interest at such rate as the Court thinks just;
- or
- (d) pay to the company such sum by way of damages in respect of the misapplication, retainer, negligence, default, breach of duty or breach of trust, as the Court thinks just,

or may apply for both such an examination and such an order.

(1a) In relation to a company referred to in subsection (1) of this section—

- (a) a liquidator or provisional liquidator of the company;
- (b) a contributory of the company;
- (c) where the company is under official management—the official manager or a member of the company;

and

Repeal of s. 367b of principal Act and enactment of section in its place.

Power of Court to assess damages against delinquent officers.

(d) a person authorized by the Commission to make an application under subsection (1) of this section,  
are prescribed persons for the purposes of that subsection.

(2) This section extends and applies to the receipt of any money or property by any officer or former officer of the company, whether by way of salary or otherwise, which appears to the Court to have been unfair or unjust to the company or its members.

(3) The provisions of this section apply notwithstanding that the person concerned may be criminally liable in respect of the matters in respect of which the order is sought.

(4) Where the Court is satisfied that an application was made under this section without reasonable cause, it may order the whole or any part of the costs incurred by the person against whom the order was sought to be paid by the applicant.

Repeal of s. 367c of principal Act and enactment of section in its place.

Interpretation.

246. Section 367c of the principal Act is repealed and the following section is enacted and inserted in its place:—

367c. (1) In sections 367a and 367b of this Act “company to which this section applies” means a company, or an unregistered company within the meaning of Division V of Part X of this Act—

- (a) which is in course of being wound up;
- (b) which is under official management;
- (c) in respect of affairs of which there is an inspector within the meaning of Part VIA of this Act;
- (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;

or

- (f) which has entered into a compromise or scheme of arrangement with its creditors.

(2) For the purposes of subsection (1) of this section a company shall be deemed—

- (a) to have ceased to carry on business if the Commission has—
  - (i) sent to the company by post a letter pursuant to the provisions of subsection (1) of section 308 of this Act and has not, within the next succeeding period of one month, received an answer 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 of this Act;

and

- (b) to be unable to pay its debts if execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied wholly or in part.

**247.** Section 368 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Repeal of s. 368 of principal Act and enactment of section in its place.

368. (1) If on application to the Court by the Commission there is shown to be reasonable cause to believe that any person has, while an officer of a company, committed an offence in connection with the management of the company's affairs and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company, an order may be made—

Production and inspection of books where offence suspected.

- (a) authorizing any person named therein to inspect such books or papers or any of them for the purpose of investigating and obtaining evidence of the offence;

or

- (b) requiring the secretary or such other officer as is named in the order to produce such books or papers or any of them to a person named in the order at a place so named.

(2) An appeal shall not lie to the Full Court from any order or decision of the Court on or in relation to an application under this section, except by leave of the Full Court.

**248.** Section 370 of the principal Act is amended by striking out subsection (2) and inserting in lieu thereof the following subsection:—

Amendment of principal Act, s. 370—  
Inspection of registers.

(2) Any person permitted by this Act to inspect any register, minute book or document of a corporation or banking corporation may make copies of or take extracts from it and any officer of the corporation or banking corporation who fails to allow any person so permitted to make a copy of or take extracts from the register, minute book or document as the case may be shall be guilty of an offence against this Act.

**249.** Section 371 of the principal Act is amended by striking out from subsection (1) the word "Registrar" wherever it occurs and inserting in lieu thereof, in each case, the word "Commission".

Amendment of principal Act, s. 371—  
Translations of instruments.

**250.** Section 372 of the principal Act is amended by striking out the passage "under the hand and seal of the Registrar" and inserting in lieu thereof the passage "under the seal of the Commission".

Amendment of principal Act, s. 372—  
Certificate of incorporation conclusive evidence.

**251.** Section 374 of the principal Act is amended—

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

Amendment of principal Act, s. 374—  
Restriction on offering shares, debentures, etc., for subscription or purchase.

(2) Subsection (1) of this section shall not apply in the case of the shares of any corporation which, after notice of intention in the form prescribed to apply for exemption from

the provisions of subsection (1) of this section has been advertised in the *Gazette* and in a daily newspaper circulating generally throughout the State, has applied to the Minister for such exemption and the application has been granted, but such exemption may at any time be revoked by order of the Minister published in the *Gazette*;

(b) by striking out paragraph (a) of subsection (4) and inserting in lieu thereof the following paragraph:—

(a) where the shares to which the offer relates are shares of a class which are quoted on a prescribed stock exchange in a State or a Territory of the Commonwealth, and the offer so states, specifying the stock exchange;;

(c) by striking out subparagraph (ii) of paragraph (c) of subsection (4) and inserting in lieu thereof the following subparagraph:—

(ii) deposits with or loans to a corporation of the kind referred to in subsection (6) of section 38 of this Act;

and

(d) by inserting in paragraph (b) of subsection (14) the following subparagraph:—

(i) a credit union registered under the Credit Unions Act, 1976.

Repeal of  
s. 374b of  
principal Act,  
and enactment  
of section in  
its place.

**252.** Section 374b of the principal Act is repealed and the following section is enacted and inserted in its place:—

Liability  
where proper  
accounts  
not kept.

374b. Where the provisions of section 161a of this Act have not been complied with in respect of a company to which this section applies throughout the period of two years immediately preceding the relevant day or the period between the incorporation of the company and the relevant day, whichever is the shorter, every officer who is in default is, unless he shows that he acted honestly and shows that in the circumstances in which the business of the company was carried on the default was excusable, guilty of an offence against this Act.

Penalty: Two thousand five hundred dollars or imprisonment for one year.

Amendment of  
principal Act,  
s. 374c—  
Offences.

**253.** Section 374c of the principal Act is amended by inserting after subsection (2) the following subsection:—

(3) Notwithstanding anything in section 382 of this Act proceedings for an offence referred to in subsection (1) of this section, whenever committed, may be brought within the period of three years that next succeeds—

(a) the date on which the company became a company to which this section applies;

or

(b) the date on which the debt was contracted,

whichever is the later, but nothing in this subsection authorizes the institution of proceedings with respect to a debt contracted more than three years before the company became a company to which this section applies.

**254.** Section 374d of the principal Act is amended—

Amendment of  
principal Act,  
s. 374d—  
Powers of  
Court.

(a) by striking out from subsection (1) the passage “on the application of the appropriate officer or, with the consent of the Attorney-General, any creditor or contributory of the company” and inserting in lieu thereof the passage “on the application of the Commission or a prescribed person”;

(b) by inserting after subsection (1) the following subsection:—

(1a) In relation to a company to which a conviction referred to in subsection (1) of this section relates—

(a) the appropriate officer;

and

(b) a creditor or contributory of the company authorized by the Minister to make an application under subsection (1) of this section,

are prescribed persons for the purposes of that subsection;

and

(c) by inserting in subsection (5) after the word “officer” the passage “or other applicant”.

**255.** Section 374e of the principal Act is amended—

Amendment of  
principal Act,  
s. 374e—  
Interpretation.

(a) by striking out paragraph (a) of the definition of “appropriate officer” in subsection (1) and inserting in lieu thereof the following paragraph:—

(a) in relation to a company, or an unregistered company within the meaning of Division V of Part X of this Act, which is being wound up, the liquidator;;

(b) by striking out from paragraph (c) of the definition of “appropriate officer” in subsection (1) the passage “Attorney-General” and inserting in lieu thereof the word “Minister”;

(c) by striking out paragraph (e) of the definition of “appropriate officer” in subsection (1) and inserting in lieu thereof the following paragraph:—

(e) in relation to any company which, within the meaning of subsection (2) of this section, has ceased to carry on business or is unable to pay its debts, the Commission;;

(d) by striking out from subsection (1) the definition of “company to which this section applies” and inserting in lieu thereof the following definition:—

“company to which this section applies” means a company, or an unregistered company within the meaning of Division V of Part X of this Act—

- (a) which is in course of being wound up;
- (b) which is under official management;
- (c) in respect of affairs of which there is an inspector within the meaning of Part VIA of this Act;
- (d) in respect of which a receiver or manager has been appointed whether by the Court or pursuant to the powers contained in any instrument;

or

- (e) which, within the meaning of subsection (2) of this section, has ceased to carry on business or is unable to pay its debts;
- (e) by striking out from subsection (1) the definition of “the relevant day” and inserting in lieu thereof the following definition:—

“the relevant day” means—

- (a) in relation to a company, or an unregistered company within the meaning of Division V of Part X of this Act, which is being wound up, the day upon which, under the provisions of this Act, the winding up is or is deemed to have commenced;
- (b) in relation to a company which is under official management, the day upon which it is determined that the company shall be placed under official management;
- (c) in relation to a company in respect of affairs of which there is an inspector within the meaning of Part VIA of this Act, 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, within the meaning of subsection (2) of this section, 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, within the meaning of subsection (2) of this section, ceased to carry on business, the day upon which the last return was lodged by the company pursuant to the requirements of section 158 or 159 of this Act, as the case requires.;

and

(f) by striking out paragraph (a) of subsection (2) and inserting in lieu thereof the following paragraph:—

(a) to have ceased to carry on business if the Commission has—

(i) sent to the company by post a letter pursuant to the provisions of subsection (1) of section 308 of this Act and has not, within the next succeeding period of one month, received an answer 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 of this Act.

256. Section 374h of the principal Act is amended—

(a) by striking out from subsection (1) the word “Registrar” and inserting in lieu thereof the word “Commission”;

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

(2) The Court shall not make an order under subsection (1) of this section 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) of this subsection, whether that period commenced before or after the commencement of the Companies Act Amendment Act, 1979, 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) of this subsection the manner in which the affairs of the company had been managed was wholly or partly responsible for the company being wound up, being under official management, ceasing to carry on business, being unable to satisfy a levy of execution, being subject to the appointment of a receiver or manager or entering into a compromise or scheme of arrangement with its creditors.;

and

(c) by striking out subsection (5) and inserting in lieu thereof the following subsection:—

(5) In this section “company to which this section applies” means a corporation or an unregistered company within the meaning of Division V of Part X of this Act—

Amendment of principal Act, s. 374h—  
Court may disqualify person acting as director, etc., in certain circumstances.

- (a) that has been wound up, or is in the course of being wound up, because of inability to pay its debts as and when they became due;
  - (b) that has been, or is, under official management;
  - (c) that has ceased to carry on business because it was unable to pay its debts as and when they became due;
  - (d) in respect of which a levy of execution was not satisfied;
  - (e) in respect of the property of which a receiver or manager has been appointed whether by the court or pursuant to the powers contained in an instrument;
- or
- (f) that has entered into a compromise or scheme of arrangement with its creditors.

Amendment of principal Act, s. 375—  
False and misleading statements and frauds in connection with shares debentures, etc.

**257.** Section 375 of the principal Act is amended by striking out subsection (2) and inserting in lieu thereof the following subsection:—

(2) Every person who in any 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 so 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 shall be guilty of an offence against this Act and be liable—

(a) on conviction on indictment to imprisonment for a term of two years or to a fine of five thousand dollars or both;

or

(b) on summary conviction to imprisonment for a term of six months or to a fine of one thousand dollars or both.

Amendment of principal Act, s. 378a—  
Reciprocation in relation to offences under corresponding laws.

**258.** Section 378a of the principal Act is amended by striking out subsection (1) and inserting in lieu thereof the following subsection:—

(1) If, in the State, a person does an act or omits to do an act and that person would, if he had done that act, or had omitted to do that act, in another State or in a Territory of the Commonwealth, have been guilty of an offence against the law of that State or Territory that corresponds to a provision of this Act, that person is guilty of an offence against that provision of this Act.

Amendment of principal Act, s. 382—  
Proceedings under this Act.

**259.** Section 382 of the principal Act is amended by striking out subsection (1) and inserting in lieu thereof the following subsection:—

(1) In any proceedings for an offence against this Act, any information, charge, complaint or application may be laid and made—

(a) in the name of the Commission where not required to be laid or made on oath;

(b) by the Commissioner, or by an officer or employee of the Commission authorized by the Commissioner in that behalf;

or

(c) with the consent of the Minister, by any person,

except where this Act otherwise provides.

**260.** Section 390 of the principal Act is amended by striking out from subsection (1) the passage "four hundred dollars" wherever it occurs and inserting in lieu thereof, in each case, the passage "two thousand dollars".

Amendment of principal Act, s. 390—  
Discovery in aid of execution.

**261.** Section 396 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Repeal of s. 396 of principal Act and enactment of section in its place.  
Regulations.

396. (1) The Governor may make regulations not inconsistent with this Act for or with respect to—

(a) the keeping of registers by the Commission and the lodging or registration of documents and the time and manner of submission of documents for lodging or registration and the requirements with which documents lodged or to be lodged with the Commission shall comply;

(b) prescribing forms for the purposes of this Act;

(c) prescribing fees in respect of anything done in the course of the administration of this Act and without limiting the generality thereof prescribing fees in respect of any document required to be lodged, filed, registered with or issued by the Commission under this or any other Act or for any act required to be performed by the Commission or for the inspection of any such document or for any examination conducted by the Board;

(ca) prescribing the manner in which, and the persons by whom, and the directions or requirements in accordance with which, the forms prescribed for the purposes of this Act, or any of them, shall or may be signed, prepared, or completed, and generally regulating the signing, preparation, and completion of those forms, or any of them;

(cb) the summoning of, conduct of, and procedure and voting at, meetings of creditors, contributories, and holders of debentures, respectively, and at joint meetings of creditors and members of companies, the number of persons who shall constitute a quorum at any such meeting, the sending of notices of meetings to persons entitled to attend thereat, and the lodging with the Commission of copies of notices of meetings and of resolutions passed thereat, and generally regulating the conduct of, and procedure at, any such meeting;

(cc) prescribing the persons by whom, and the cases and manner in which, proxies may be appointed, and generally regulating the appointment and powers of proxies;

- (cd) the proof of debts in the winding up of a company, the manner of proving debts and the time within which debts shall or may be proved, and generally regulating the proving of debts;
- (d) prescribing times for the lodging of any documents with the Commission;
- (e) all matters or things which by this Act are required or permitted to be prescribed otherwise than by rules or which are necessary or expedient to be prescribed for giving effect to this Act.

(2) The regulations may require—

- (a) in cases where documents required by or under this Act to be lodged in accordance with this Act are to be verified or certified and no manner of verification or certification is prescribed by or under this Act, such documents or any of them to be verified or certified by statutory declaration or affidavit made by such persons as may be prescribed;
- (b) in cases where no express provision is made for verification or certification of documents, such documents as may be prescribed to be verified or certified as referred to in paragraph (a) of this subsection.

(3) A person shall not in respect of any document be proceeded against for any offence in consequence of any regulation made pursuant to this subsection as well as against subsection (2) of section 375 of this Act.

(4) The regulations may provide that, in such cases as may be prescribed, where a document that is required by or under this Act to be lodged with the Commission is signed or lodged on behalf of a person by his agent thereunder authorized in writing there shall be—

- (a) lodged with;
- (b) endorsed on;
- or
- (c) annexed to,

that document, the original, or a verified copy of the authority.

(5) The regulations may impose a penalty not exceeding forty dollars for any breach thereof.

Repeal of  
Part XIII of  
principal Act  
and enactment  
of Part in  
its place.

262. Part XIII of the principal Act is repealed and the following Part is enacted and inserted in its place:—

### PART XIII

#### THE CORPORATE AFFAIRS COMMISSION

##### DIVISION I—THE CORPORATE AFFAIRS COMMISSION

Establishment  
of the  
Commission.

397. (1) There shall be a Commission entitled the “Corporate Affairs Commission”.

(2) The Commission—

- (a) shall be a body corporate with perpetual succession and a common seal;
  - (b) shall be capable of suing and being sued;
  - (c) shall be capable of acquiring, holding, dealing with, and disposing of any interest in real or personal property;
  - (d) shall be capable of acquiring or incurring any other rights or liabilities;
  - (e) shall hold its property for and on behalf of the Crown;
- and
- (f) shall have the powers, authorities, functions and duties conferred, assigned or imposed upon it by or under this or any other Act.

(3) The Commission shall be constituted of—

- (a) the Commissioner;
- or
- (b) the Deputy Commissioner.

(4) An apparently genuine document purporting to bear the common seal of the Commission shall be presumed in any legal proceedings, in the absence of proof to the contrary, to have been duly executed by the Commission.

398. (1) The Commission may, by instrument in writing, delegate all or any of its powers, authorities, functions or duties (except this power of delegation) under this Act to any person and those powers, authorities, functions or duties may be exercised or performed by that person accordingly. **Delegation.**

(2) The Commission may by instrument in writing revoke or vary any delegation given under subsection (1) of this section.

(3) The exercise or performance of any power, authority, function or duty by a delegate pursuant to subsection (1) of this section shall not affect the exercise or performance of that power, authority, function or duty by the Commission.

399. (1) All property real or personal and all powers, authorities, immunities, rights, privileges, functions, obligations and duties which immediately before the commencement of this section were vested in or imposed upon the Registrar of Companies in his capacity as such shall be vested in the Commission. **Savings.**

(2) Nothing in this Act shall render defective any application or proceeding by or against the Registrar of Companies and any application or proceeding that might have been continued or commenced by or against the Registrar of Companies may be continued or commenced by or against the Commission.

(3) Any reference in any Act, regulation, proclamation, order-in-council, rule, instrument, contract or document to the Registrar of Companies shall, unless inconsistent with the context or subject-matter, be deemed to be a reference to the Commission.

(4) All acts, matters or things of a continuing nature done or commenced before the commencement of this section by, on behalf of or in relation to the Registrar of Companies shall be deemed to have been made, done or commenced by, on behalf of or in relation to the Commission.

Payment of moneys into General Revenue.

400. (1) Except where otherwise provided by or under this or any other Act, all moneys payable to the Commission shall be collected and received by the Commission on account of, and shall be paid into, the General Revenue of the State.

(2) The Commission shall keep proper accounts of all moneys received or disbursed by the Commission.

(3) The Auditor-General may at any time, and shall at least once in each calendar year, audit the accounts of the Commission.

(4) The Auditor-General shall have in relation to the accounts and officers of the Commission the powers that are vested in the Auditor-General by the Audit Act, 1921-1975, in relation to public accounts and accounting officers.

Report to be prepared by Commission.

401. (1) The Commission shall, as soon as practicable after the thirtieth day of June, in each year, prepare and submit to the Minister a report on the administration of this Act during the period of twelve months ending on that day.

(2) The Minister shall, as soon as practicable after receipt of the report, cause a copy of the report to be laid before each House of Parliament.

#### DIVISION II—THE COMMISSIONER, DEPUTY COMMISSIONER AND ASSISTANT COMMISSIONER

Appointment of the Commissioner.

402. (1) There shall be a Commissioner for Corporate Affairs.

(2) The Commissioner shall be appointed, and shall hold office, subject to, and in accordance with, the Public Service Act, 1967-1978.

Deputy Commissioner for Corporate Affairs.

403. (1) There shall be a Deputy Commissioner for Corporate Affairs.

(2) The Deputy Commissioner shall be appointed, and shall hold office, subject to, and in accordance with, the Public Service Act, 1967-1978.

Assistant Commissioner for Corporate Affairs.

404. (1) There shall be an Assistant Commissioner for Corporate Affairs.

(2) The Assistant Commissioner shall be appointed, and shall hold office, subject to, and in accordance with, the Public Service Act, 1967-1978.

Officers of the Commission.

405. (1) There shall be such officers of the Commission as are necessary for the administration of this Part.

(2) Any such officer shall be appointed, and shall hold office, under the Public Service Act, 1967-1978.

(3) For the purposes of the exercise or discharge by the Commission of its powers, authorities, duties and functions, the Commission may, with the approval of the Minister and of the body or person concerned

and on such terms and conditions as may be approved by the Public Service Board, make use of the services of any of the officers, employees or servants of any body or person.

(4) The Commission may, with the approval of the Public Service Board and on such terms and conditions as may be approved by the Board, appoint persons to be officers of the Commission for the purpose of conducting or assisting in the conduct of investigations or inspections under this Act or the Securities Industry Act, 1979.

(5) A person may be appointed to be an officer of the Commission pursuant to subsection (4) of this section for a term not exceeding three years, and upon the expiration of that term, shall be eligible for reappointment.

(6) An officer referred to in subsection (3) of this section is not, in his capacity as such, an officer within the meaning of the Public Service Act, 1967-1978, but, if the terms and conditions on which he is appointed so provide, any specified provisions of that Act or the regulations thereunder, whether with or without specified modifications, apply to and in respect of him as if he were an employee within the meaning of that Act.

(7) A reference in this Act to an officer or employee of the Commission is a reference to—

- (a) an officer or employee referred to in subsection (1) of this section;
  - (b) an officer, employee or servant referred to in subsection (3) of this section whose services are being made use of under that subsection;
- or
- (c) an officer referred to in subsection (4) of this section.

**263.** The second schedule to the principal Act is repealed.

Repeal of  
second  
schedule of  
principal Act.

**264.** The fourth schedule to the principal Act is amended—

Amendment of  
fourth  
schedule of  
principal Act.

- (a) by striking out from clause 45 of Table A the passage “seven days’ notice” and inserting in lieu thereof the passage “fourteen days’ notice”;
  - (b) by striking out from clause 46 of Table A the passage “and fixing of the remuneration”;
  - (c) by striking out from clause 47 of Table A the passage “or a private company”;
  - (d) by striking out from clause 29 of Table B the passage “and fixing of the remuneration”;
- and
- (e) by striking out from clause 28 of Table B the passage “seven days’ notice” and inserting in lieu thereof the passage “fourteen days’ notice”.

**265.** The fifth schedule to the principal Act is amended—

Amendment of  
fifth  
schedule of  
principal Act.

- (a) by striking out from subclause (2) of clause 20 the word “Minister” and inserting in lieu thereof the word “Commission”;

(b) by striking out from clause 21 the word “Minister” and inserting in lieu thereof the word “Commission”;

and

(c) by striking out from subclause (1) of clause 22 the word “Minister” and inserting in lieu thereof the word “Commission”.

Amendment of  
sixth  
schedule of  
principal Act.

**266.** The sixth schedule to the principal Act is amended by striking out from Part II the word “Registrar” wherever it occurs and inserting in lieu thereof, in each case, the word “Commission”.

Amendment of  
seventh  
schedule of  
principal Act.

**267.** The seventh schedule to the principal Act is amended by striking out clause 34 and inserting in lieu thereof the following clause:—

34. A declaration—

(a) that no units or sub-units of interests purchased or subscribed for pursuant to the statement shall be made available to applicants later than six months after the date appearing in the statement pursuant to paragraph 1;

and

(b) unless the conditions of issue of the units or sub-units expressly provide that certificates be not issued, that certificates shall be issued by the trustee or representative to purchasers of or subscribers for units or sub-units of interests purchased or subscribed for pursuant to the statement not more than two months after the units or sub-units are made available.

Amendment of  
eighth  
schedule of  
principal Act.

**268.** The eighth schedule to the principal Act is amended—

(a) by inserting after clause 2 the following clause:—

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

and

(b) by striking out clauses 4, 5 and 6 and inserting in lieu thereof the following clauses:—

4. Particulars of the total amount of the indebtedness of the company secured on the property (whether real or personal) or undertaking of the company.

5. Except in the case of a no-liability company and in the case of a company exempted under the provision of section 160 of this Act a list as at the date of the return or as at such other date as the Commission authorizes in the case of any company—

(a) containing the names (that is to say at least the surname and one Christian or other name and other initials) and addresses of all persons who on such date are members of the company;

(b) stating the number of shares held by each member at the date of the list;

(c) if the names are not arranged in alphabetical order, having annexed thereto an index sufficient to enable the name of any person in the list to be easily found.

6. Where the company has converted any of its shares into stock and given notice of the conversion to the Commission, the list must give particulars as to the amount of stock or the number of stock units instead of the amount of shares.

269. Part II of the eighth schedule to the principal Act is repealed and the following Part is enacted and inserted in its place:—

Repeal of Part II of eighth schedule of principal Act and enactment of Part in its place.

PART II

Form of Annual Return of a Company Having a Share Capital

Annual return of the Limited  
 made up to the day of 19 [being  
 the date of or a date not later than the fourteenth day after the date of the Annual General Meeting in 19 ].

The accounts of the company <sup>\*were</sup> laid before the Annual General Meeting of the company held on <sup>\*were not</sup>

19 ], being <sup>\*the date of this return.</sup>  
<sup>\*the date of the Annual General Meeting last held before the date of this return.</sup>

The address of the registered office of the company is

The address of the place at which the register of members is kept if other than the registered office is

The business names under which the company carries on business are

\*Strike out whichever is inapplicable

Summary of Share Capital and Shares

Nominal share capital \$	divided into <sup>1</sup> .....	}	shares of \$	each.
			shares of \$	each.
Total number of shares taken up <sup>1</sup> to the	day of	}		
19 (being the date of the return or other authorized date.)				
Number of shares issued subject to payment wholly in cash	.....			
Number of shares issued as fully paid up otherwise than in cash	.....			
Number of shares issued as partly paid up to the extent of	per share	}		
otherwise than in cash				
<sup>2</sup> Number of shares (if any) of each class issued at a discount	.....			
Total amount of discount on the issue of shares which has not been written off at the date of this return		}	\$	
<sup>3</sup> There has been called up on each of	shares, \$			
<sup>3</sup> There has been called up on each of	shares, \$			
<sup>3</sup> There has been called up on each of	shares, \$			
<sup>4</sup> Total amount of calls received including payments on application and allotment	..		\$	
Total amount (if any) agreed to be considered as paid on shares which have been issued as fully paid up otherwise than in cash		}	\$	
Total amount (if any) agreed to be considered as paid on shares which have been issued as partly paid up to the extent of	per share otherwise than in cash			\$
Total amount of calls unpaid	.....		\$	
Total amount of the sums (if any) paid by way of commission in respect of any shares or debentures since the date of the last return		}	\$	
Total amount of the sums (if any) allowed by way of discount in respect of any debentures since the date of the last return				\$
Total number of shares forfeited	.....			
Total amount paid (if any) on shares forfeited	.....		\$	
<sup>5</sup> Total amount of the indebtedness of the company secured on the property (whether real or personal) or undertaking of the company		}	\$	

<sup>1</sup>Where there are shares of different kinds or amounts (e.g., Preference and Ordinary or \$20 and \$40) state the numbers and nominal values separately.

<sup>2</sup>If the shares are of different kinds, state them separately.

<sup>3</sup>Where various amounts have been called or there are shares of different kinds, state them separately.

<sup>4</sup>Include what has been received on forfeited as well as on existing shares.

<sup>5</sup>State the total amount of indebtedness and show, in respect of any charge registered with the Commission, the registered number thereof, the date of registration and the amount of indebtedness at the date of the return.

*Copy of Last Accounts of the Company*

Except in the case of—

- (a) a company that, during the whole of the financial year to which the return relates, was an exempt proprietary company and an unlimited company; or
- (b) a company that, during the whole of the financial year to which the return relates was an exempt proprietary company, being a company of which the accounts and group accounts (if any) for that financial year were audited in accordance with the Companies Act, 1962-1979,

the return must include a copy, certified by a director, or by the manager or secretary, of the company to be a true copy, of all accounts and group accounts (if any) required to be 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.

*Certificate to be given by all companies*

A certificate in the form set out hereunder shall be given by the secretary or a director of every company and in the case of an exempt proprietary company by both a director and a secretary.

*Certificate*

I/We<sup>1</sup> after having made due inquiries certify—

- (a) that the provisions of the Unclaimed Moneys Act, 1891-1975, as amended, relating to unclaimed moneys have been complied with; and
- (b) having made an inspection of the share register, that transfers
  - have*<sup>1</sup> been registered since the date of *the last annual return*<sup>1</sup>
  - have not* been registered since the date of *the incorporation of the company*
- (c)<sup>2</sup> that the company has not since the date of the last annual return<sup>3</sup> issued any invitation to the public to subscribe for any shares in or debentures of the company or to deposit moneys for fixed periods or payable at call.
- (d)<sup>4</sup> that the excess of members of the company above fifty (counting joint holders of shares as one person) consists wholly of persons who are in the employment of the company or of its subsidiary or persons who while previously in the employment of the company or of its subsidiary were and thereafter have continued to be members of the company.
- (e)<sup>5</sup> that to the best of our knowledge and belief the company was an exempt proprietary company within the meaning of section 5 of the Companies Act, 1962-1979, as amended, during the whole of the period covered by the accounts.
- (f)<sup>6</sup> that at the Annual General Meeting held on 19  
the company pursuant to section 165a of the Companies Act, 1962-1979, did not appoint an auditor.
- (g)<sup>7</sup> that at the Annual General Meeting held on 19  
the company, pursuant to section 165b of the Companies Act, 1962-1979, did not appoint an auditor.

<sup>1</sup>Strike out whichever is inapplicable.

<sup>2</sup>Strike out this paragraph if the company is not a proprietary company.

<sup>3</sup>In the case of the first annual return of a proprietary company, strike out the words "last annual return" and substitute therefor the words "incorporation of the company."

<sup>4</sup>Strike out this paragraph except in the case of a proprietary company whose members exceed fifty.

<sup>5</sup>Strike out except in the case of an exempt proprietary company.

<sup>6</sup>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.

<sup>7</sup>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.

NOTE—A certificate signed by the same person in the capacity of both director and secretary will not be accepted. See section 132 (5) of the Companies Act, 1962-1979.

*Particulars of the \*Directors, Managers, Secretaries and Auditors of Limited, at the date of the Annual Return*

The Present Christian or Other Name or Names and Surname†	Any Former Christian or Other Name or Names or Surname	Usual Address‡	Other Business Occupation and in the case of Directors Particulars of Other Directorships required to be shown by s. 134 (2) (c) and (3) (If none, state so)
Directors			
Manager (if any)			
Secretaries			
Auditors for current financial year			

\*"Director" includes any person who occupies the position of a director by whatever name called and any person in accordance with whose directions or instructions the directors of a company are accustomed to act.

†In the case of a corporation its corporate name and registered or principal office should be shown.

‡In the case of directors the address given must be the usual residential address. See s. 134 (2) (a).

List of persons holding shares in \_\_\_\_\_ Limited on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ (being the date of the return or other authorized date) and an account of the shares so held.

NOTE—If the names in this list are not arranged in alphabetical order, an index sufficient to enable the name of any person in the list to be readily found must be annexed to this list.

NOTE—In the case of a no-liability company or a company exempted under the provisions of section 160 of the Companies Act, 1962-1979, this list is not required to be supplied.

Folio in Register Ledger Containing Particulars	Names and Addresses	*Number of Shares held by Existing Members†

\*The aggregate number of shares held, and not the distinctive numbers, must be stated, and the column must be added up throughout so as to make one total to agree with that stated in the summary to have been taken up.

†When the shares are of different classes these columns may be subdivided so that the number of each class held may be shown separately. Where any shares have been converted into stock particulars of the amount of stock must be shown.

*No-Liability Companies*

Particulars as to calls and sales of forfeited shares (to be given only in the case of a no-liability company)—

- (a) the date when each call made since the date of the last return or, in the case of a first return, since incorporation was payable;
  - (b) the dates since the last return or, in the case of a first return, since incorporation when shares forfeited were offered for sale and the place of offer;
  - (c) the number of shares sold at each sale of forfeited shares made since the date of the last return or, in the case of a first return, since incorporation;
  - (d) the number of shares unsold at each offer for sale of forfeited shares made since the date of the last return or, in the case of a first return, since incorporation;
- and
- (e) the number of shares not sold at forfeiture sales, but disposed of by the company pursuant to section 324 (3) since the date of the last return or since the date of incorporation in the case of the first return.

[Signature]

[State whether director or manager or secretary]

Amendment of  
ninth  
schedule of  
principal Act.

**270.** The ninth schedule to the principal Act is amended by striking out paragraph (i) of subclause (4) of clause 5 and inserting in lieu thereof the following paragraph:—

- (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 a director of the company or of a related corporation or to a relative within the meaning of section 125 of this Act of such a director or to a corporation in which such a director or relative has, or two or more such persons together have, a substantial shareholding within the meaning of Division IIIA of Part IV of this Act.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor