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No. 2196.

An Act to consolidate and amend the Law relating to Companies, and for other purposes.

[Assented to, December 6th, 1934.]

Be it Enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I.

PRELIMINARY.

1. (1) This Act may be cited as "The Companies Act, 1934," and shall come into operation on a date to be fixed by proclamation: Provided that Part XIII. shall come into operation on the day on which this Act receives the Royal Assent.

(2) This Act is divided into Parts, as follows:

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The Companies Act.—1934.

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PART V.—Restrictions on sale of shares and offers of shares for sale. (Sections 365 to 369).

PART VI.—Miscellaneous. (Sections 370 to 402).


2. (1) The Acts mentioned in the Twelfth Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule:

Provided that the repeal shall not affect—

(a) The incorporation of any company registered before the commencement of this Act; nor

(b) Table A in the Second Schedule annexed to The Companies Act, 1892, or any part thereof (either as originally contained in that Schedule or as altered in pursuance of section 63 of that Act), so far as the same applies to any company existing at the commencement of this Act; nor

(c) Any nomination, appointment, affidavit, call, forfeiture, winding-up order, minute, assignment, registration, transfer, list, rule, regulation, or order made, or any application pending, or any petition presented, or any licence, certificate, security, or notice given, or any summons issued, or any resolution passed, or any agreement, contract, conveyance, mortgage, power of attorney, compromise, or other arrangement, deed, or other instrument validated, entered into, commenced, or executed under the said Acts or any of them before the commencement of this Act.

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

3. (1) Except where this Act or any other Act otherwise provides this Act shall not apply to any association incorporated under the Associations Incorporation Act, 1929, nor to any building society under the Building Societies Act, 1881 (in this section called a build-
The Companies Act—1934.


4. Where any Act repealed by this Act, or any provisions of any such Act, is referred to in any document, that document shall be construed as referring to this Act or the corresponding provision of this Act.

5. Nothing in this Act shall affect the provisions of The Trade Saving of Acts.

6. The provisions of this Act with respect to winding-up shall not apply to any company of which the winding-up commenced before the commencement of this Act, but every such company shall be wound up in the same manner and with the same incidents as if this Act had not passed; and for the purposes of the winding-up the Act or Acts and regulations under which the winding-up commenced shall be deemed to remain in full force.

7. Every existing company not being a company incorporated by any special Act, charter, or letters patent, or a no-liability company, and not being a company which has determined to be a proprietary company or private company within six months from the date of commencement of this Act, shall be deemed to be a private company within the meaning of this Act.

Interpretation.

8. In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them; that is to say:—

"Articles" means the articles of association of a company as originally framed or as altered by special resolution.
PART I.

First Schedule.

Table A. and B.

including, so far as they apply to the company, the regulations contained (as the case may be) in Table A in the First Schedule annexed to The Companies Act, 1892, or in that table as altered in pursuance of section 63 of that Act, or in Tables A or B in the First Schedule to this Act:

"Authorised Auditor" means a person duly licensed to act as an auditor under section 371 of this Act:

"Authorised Liquidator" means a person duly licensed to act as a liquidator under section 371 of this Act and who has given security as in section 371 of this Act mentioned:

"Bankruptcy" includes liquidation by arrangement of the affairs of a debtor under the provisions of the Bankruptcy Act, 1924-1932, and "Bankrupt" has a corresponding meaning:

"Books and papers" and "books or papers" include accounts, deeds, writings, and documents:

"Company" means a company formed and registered under this Act, or an existing company:

"Debenture" includes debenture stock, bonds and other securities of a company whether constituting a charge on the assets of the company or not:

"Director" includes any person occupying the position of director by whatever name called:

"Document" includes summons, notice, order, and other legal process and registers:

"Existing company" means a company not being a foreign company registered under or subject to The Companies Act, 1892:

"Liquidator" includes official liquidator, provisional official liquidator, or provisional liquidator:

"Manager" includes managing director, secretary, or principal executive officer, by whatever designation he is styled:

"Memorandum" means the memorandum of association or deed of settlement of a company as originally framed or altered in pursuance of any enactment:

"Mining purposes" means the purpose of obtaining any metal, mineral, or mineral or other product, including oil, by any mode whereby soil, earth, rock, or stone may be drilled, disturbed, smelted, refined, crushed, or otherwise dealt with:

"Mortgage" includes charge or an agreement to give a mortgage or charge:

"No-liability company" means a company formed with no liability on the part of its members:
"Part" means Part of this Act:

"Practitioner" or "Solicitor" means a practitioner of the Supreme Court of South Australia, lawfully practising as such for the time being:

"Prospectus" means any prospectus, notice, circular, advertisement, or other invitation offering to the public for subscription or purchase any shares or debentures of a company:

"Public Company" means a company limited by shares not being a no-liability company and not being a proprietary company or a private company:

"Representative" means the committee of a mentally defective person within the meaning of the Mental Defectives Acts, 1913 to 1933, and an executor or administrator, and includes the Public Trustee in cases where the Court shall have authorised him to administer the estate of a deceased person. It also includes "devisee" and "heir at law" where a devisee or heir at law is liable as a contributory:

"Section" means section of this Act:

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

"Scrip" includes share certificate and "share certificate" includes scrip:

"The Companies Acts" means The Companies Act, 1892, and any Act amending it:

"The Court" means the Supreme Court or any Judge thereof, and where the Rules of Court give jurisdiction to the Master of the Supreme Court in any particular matter, includes a Master of the Supreme Court:

"The Registrar" means the Registrar of Companies for the time being and includes any duly-appointed acting or deputy registrar.

Prohibition of Large Partnerships.

9. (1) No company, association, or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking unless it is registered as a company under this Act, or is formed in pursuance of some other Act of Parliament or of letters patent.

(2) No company, association, or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Act of Parliament or by letters patent, or Royal Charter.
PART II.

INCORPORATION OF COMPANIES AND MATTERS INCIDENTAL THERETO.

Memorandum of Association.

10. Any five or more persons or, where the company to be formed will be a proprietary or private company within the meaning of sections 37 and 38 of this Act, any two or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability, or in case of a company formed for mining purposes with no-liability; that is to say—

i. a company having the liability of its members limited by the memorandum to the amount (if any) unpaid on the shares respectively held by them, or a no-liability company within the meaning of this Act (each of which companies, except where no-liability companies are expressly excluded, is in this Act included in the term "a company limited by shares"); or

ii. a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act termed "a company limited by guarantee"); or

iii. a company not having any limit on the liability of its members (in this Act termed "an unlimited company").

11. In the case of a company limited by shares not being a no-liability Company—

i. the memorandum must state—

(a) the name of the company with the word "Limited" as the last word in its name:
(b) the objects of the company:
(c) that the liability of its members is limited:
(d) the amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount:

ii. no subscriber of the memorandum may take less than one share:

iii. each subscriber must write opposite to his name the number of shares he takes.
12. (1) In the case of a no-liability company—

1. the memorandum must state—

(i.) the name of the company, with "No-Liability" as the last words in its name:

(ii.) the objects of the company:

(iii.) that the members take no liability:

(iv.) the amount of the share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount:

II. no subscriber of the memorandum may take less than one share:

III. each subscriber must write opposite to his name the number of shares he takes.

(2) The objects and powers of a no-liability company, whether express or implied, shall be limited to mining purposes and to treating, selling, or otherwise disposing of ores, metals, minerals and all products of mining, and to powers necessary for or incidental or conducive to carrying on such purposes, businesses, or operations.

13. In the case of a company limited by guarantee—

1. the memorandum must state—

(a) the name of the company, with "Limited" as the last word in its name:

(b) the objects of the company:

(c) that the liability of members is limited:

(d) that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges, and expenses of winding-up, and for adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding a specified amount:

II. if the company has a share capital—

(a) the memorandum must also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount:

(b) no subscriber of the memorandum may take less than one share:

(c) each subscriber must write opposite to his name the number of shares he takes.
PART II.

Memorandum of unlimited company.
Imp., 1908, s. 5.
Tas., s. 14.
Vic., s. 13.

14. In the case of an unlimited company—

I. the memorandum must state—

(a) the name of the company:

(b) the objects of the company:

(c) that the liability of the members is unlimited:

II. if the company has a share capital—

(a) the memorandum must also state the amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount:

(b) no subscriber of the memorandum may take less than one share:

(c) each subscriber must write opposite to his name the number of shares he takes.

Signature, &c., of memorandum.
Imp., 1921, s. 3.
Tas., B. Hi.
Vic., s. 14.
Partly new.
S.A., s. 12.

15. The memorandum must—

I. be printed or typewritten; and

II. be signed by each subscriber, in the presence of at least one witness, who must attest the signature:

Provided that a person who is a subscriber to a memorandum shall not be competent to witness and attest the signature thereto of any other subscriber.

16. A company may not alter the conditions contained in its memorandum except in the cases, and in the mode and to the extent for which express provision is made in this Act.

Restriction on alteration of memorandum.
Imp., s. 4.
Vic., s. 15.
Tas., s. 16.

Mode of alteration of objects of company.
Imp., s. 5.
Vic., s. 17.
Tas., s. 18.
S.A., s. 66.

17. (1) Subject to the provisions of this section, a company may by special resolution alter the provisions of its memorandum or deed of settlement with respect to the objects of the company so far as may be required for all or any of the purposes hereinafter specified, or alter the form of its constitution by substituting a memorandum and articles of association for a deed of settlement, either with or without any alteration as aforesaid with respect to the objects of the company.

(2) The purposes for which the alteration of the memorandum or deed of settlement may be made with respect to the objects of the company are to enable it—

I. to carry on its business more economically or more efficiently; or

II. to attain its main purpose by new or improved means; or

III. to enlarge or change the local area of its operations; or
iv. to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; or

v. to restrict or abandon any of the objects specified in the memorandum; or

vi. to sell or dispose of the whole or any part of the undertaking of the company; or

vii. to amalgamate with any other company or body of persons.

(3) The alteration shall not take effect until and except in so far as it is confirmed on petition by the Court.

(4) Before confirming the alteration the Court must be satisfied—

i. that the alteration is desired for all, or some, or one of the purposes in this section mentioned;

ii. that sufficient notice has been given to every holder of debentures of the company, and to any persons or class of persons whose interests will in the opinion of the Court be affected by the alteration; and

iii. that with respect to every creditor who in the opinion of the Court is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged, or has determined or has been secured to the satisfaction of the Court:

Provided that the Court may in the case of any person or class for special reasons dispense with the notice required by this section.

(5) The Court may make an order confirming the alteration, either wholly or in part, and on such terms and conditions as it thinks fit, and may make such order as to costs as it thinks proper.

(6) The Court shall, in exercising its discretion under this section, have regard to the rights and interests of the members of the company, or of any class of them, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members; and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement: Provided that no part of the capital of the company may be expended in any such purchase.

(7) (a) An office copy of the order confirming any alteration under this section, together with a printed or typewritten copy of the memorandum of association or deed of settlement so altered, or together with a copy of the substituted memorandum and articles of association, as the case may be, shall be delivered by the company to the Registrar within fifteen days from the date of the order.
(b) The Registrar shall register the same, and shall certify under his hand the registration thereof.

(c) The certificate of the Registrar shall be conclusive evidence that all the requirements of this Act, with respect to such alteration and the confirmation thereof, have been complied with, and that the alteration and confirmation are valid, and thenceforth the memorandum or deed of settlement so altered shall be the memorandum of association or deed of settlement of the company, or, as the case may be, such substituted memorandum and articles of association shall apply to the company as if it were a company registered under Part II. of this Act, with such memorandum and articles, and the company's deed of settlement shall cease to apply to the company.

(d) The Court may at any time extend the time for the filing of documents with the Registrar under this section for such period as the Court may think proper.

(8) If a company makes default in filing with the Registrar any document required by this section to be filed with him the company and every officer of the company who is in default shall be liable to a default fine.

Articles of Association.

18. (1) There may in the case of a company limited by shares, and there shall in the case of a company limited by guarantee or unlimited, be registered with the memorandum articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

(2) In the case of a company limited by shares not being a no-liability company the articles may adopt all or any of the regulations in Table A in the First Schedule to this Act.

(3) In the case of a no-liability company the articles may adopt all or any of the regulations in Table B in the First Schedule to this Act.

(4) In the case of an unlimited company or a company limited by guarantee the articles, if the company has a share capital, must state the amount of share capital with which the company proposes to be registered.

(5) In the case of an unlimited company or a company limited by guarantee, if the company has not a share capital, the articles must state the number of members with which the company proposes to be registered, for the purpose of enabling the Registrar to determine the fees payable on registration.

(6) Where a company not having a share capital has increased the number of its members beyond the registered number it shall, within fifteen days after the increase was resolved on or took place, give to the Registrar notice of the increase, and the Registrar shall record the increase.
If default is made in complying with this subsection the company and every officer of the company who is in default shall be liable to a default fine.

19. (1) In the case of a company limited by shares, not being a no-liability company, and registered after the commencement of this Act, if articles are not registered, or if articles are registered in so far as the articles do not exclude or modify the regulations in Table A in the First Schedule to this Act, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

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

20. Articles must—

1. be printed or typewritten:
2. be divided into paragraphs and numbered consecutively:
3. be signed by each subscriber of the memorandum of association in the presence of at least one witness, who must attest the signature:

Provided that a person who is a subscriber to the articles shall not be competent to witness and attest the signature of any other subscriber.

21. (1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles.

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

Form of Memorandum and Articles.

22. The form of—

1. the memorandum of association of a company limited by shares:
2. the memorandum and articles of association of a company limited by guarantee and not having a share capital:
3. the memorandum and articles of association of a company limited by guarantee and having a share capital:
4. the memorandum and articles of association of an unlimited company having a share capital:

shall be respectively in accordance with the forms set out in Tables C, D, E, and F in the First Schedule to this Act, or as near thereto as circumstances admit.
PART II.

Registration.

23. (1) The memorandum and the articles (if any) shall be filed with the Registrar, and he shall retain and register them.

(2) The Registrar may refuse to register any memorandum and articles (if any) where any of the signatories thereto are under the age of twenty-one years.

24. (1) On the registration of the memorandum and articles (if any) of a company the Registrar shall certify under his hand that the company is incorporated as a limited company, a private limited company, a no-liability company, a proprietary company, an unlimited company, or a company limited by guarantee, as the case may be.

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

25. (1)---

(a) After signing and sealing such certificate of incorporation, the Registrar shall insert a notice in the Government Gazette stating the issue of such certificate and the terms thereof:

(b) A certificate of incorporation given by the Registrar or a copy thereof certified as correct under the hand and seal of the Registrar or the Gazette containing the notice mentioned in paragraph (a) of this subsection shall be conclusive evidence that all the requirements of this Act in respect of registration, and of matters precedent and incidental thereto, have been complied with, and that the association is a company authorised to be registered and duly registered under this Act.

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

26. (1) Subject to the provisions of this section any company registered as unlimited may register under this Act as limited; but the registration of an unlimited company as a limited company shall not affect any debts, liabilities, obligations, or contracts incurred or entered into by, to, with, or on behalf of the company before the registration, and those debts, liabilities, obligations, and contracts may be enforced in manner provided by Part X. of this Act in the case of a company registered in pursuance of that Part.
(2) On registration in pursuance of this section the Registrar shall close the former registration of the company, and may dispense with the filing with him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company, but save as aforesaid the registration shall take place in the same manner and shall have effect as if it were the first registration of the company under this Act, and as if the provisions of the Acts under which the company was previously registered and regulated had been contained in different Acts from those under which the company is registered as a limited company.

Provisions with Respect to Names of Companies.

27. (1) No company shall be registered by a name identical with that by which a company in existence is already registered, or so nearly resembling that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the Registrar requires.

(2) The Registrar may refuse to register any company by a name—

(a) which is the same as any name registered under the Registration of Business Names Act, 1928, or so similar to any such business name as to be likely to be mistaken for it: Provided that if the Registrar is satisfied that a company is being registered for the purpose of taking over any business, the business name of which is registered under the said Act, and will be entitled as against the proprietor of that name to use that name, he may register the company by that name; or

(b) which is the same as that under which any existing corporation or company (being a company not registered under this Act) or society is registered under any other Act, or so similar thereto as to be likely to be mistaken for it; or

(c) which except in the case of a company which carries on the business of banking as its sole business contains the word "Bank"; or

(d) which, where the company is not a "proprietary company," "limited company," "no-liability company," or "unlimited company," contains the words "proprietary," "limited," "no-liability," or "unlimited" respectively; or

(e) which contains any words, initials, or letters capable of conveying the meaning that His Majesty has conferred any title, order, or distinction upon any person unless the Registrar is satisfied that His Majesty has in fact conferred that title, order, or distinction upon that person, and unless the Registrar is satisfied that the use of the said words, initials, or letters would not be capable of conveying the meaning that any person other than the person aforesaid is entitled to use the same; or

(f) which contains the word "co-operative" or any contraction thereof unless the written consent of the Registrar to the use of that word or contraction is filed at the time of lodging the memorandum and articles; or

(g) the use of which is prohibited by any Act or law.
(3) A solicitor engaged in the formation of a company, or a person named in the articles as a director, or the secretary of a company, may file with the Registrar a notice specifying the name by which it is proposed that the company shall be registered, and if that name is not identical with that by which a company already in existence is registered, or with a name already reserved, or does not so nearly resemble any such name as to be calculated to deceive, the name shall for thirty days from the date of filing of the notice, be reserved for the company in respect of which the notice is filed.

(4) In this section, except in paragraph (b) of subsection (2), the word "company" includes a company registered or applying to be registered under Part XII. of this Act.

28. (1) Where it is proved to the satisfaction of the Attorney-General that an association formed or about to be formed as a limited company has been or is about to be formed for the purposes of recreation or amusement, or for promoting commerce, art, science, religion, charity, or any other useful object, and intends to apply its profits (if any) or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Attorney-General may by licence direct that the association be registered as a company with limited liability without the addition of the word "Limited" to its name, and the association may be registered accordingly.

(2) A licence by the Attorney-General under this section may be granted on such conditions as the Attorney-General thinks fit, and those conditions shall be binding on the association, and shall if the Attorney-General so direct be inserted in the memorandum and articles or in one of those documents.

(3) For every such licence there shall be paid such fee as is prescribed.

(4) The association shall on registration enjoy all the privileges of limited companies, and be subject to all their obligations except those of using the word "Limited" as any part of its name, and of publishing its name and of filing with the Registrar the annual return mentioned in section 129 of this Act.

(5) A licence under this section may at any time be revoked by the Attorney-General, and upon revocation the Registrar shall enter the word "Limited" at the end of the name of the association upon the register, and the association shall cease to enjoy the exemptions and privileges granted by this section: Provided that before a licence is so revoked the Attorney-General shall give to the association notice in writing of his intention, and shall afford the association an opportunity of being heard in opposition to the revocation.

29. (1) Any company may by special resolution, and with the approval of the Registrar signified in writing, change its name.

(2) If a company, through inadvertence or otherwise, is without the consent mentioned in subsection (1) of section 27 of this Act registered by a name identical with that by which a company in existence is previously registered, or so nearly resembling it as to be calculated to deceive, the first-mentioned company shall, by special resolution, and with the sanction of the Registrar, change its name.
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(3) Where a company changes its name the Registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case.

(4) The change of name shall not affect any rights or obligations of the company, or render defective any legal proceeding instituted by or against the company, and any legal proceedings which might have been continued or commenced by or against the company by its former name may be continued or commenced against it by its new name.

(5) Any alteration so made shall within seven days from the date when a copy of the resolution relating to the alterations is filed with the Registrar, be advertised by the Registrar once in the Government Gazette, and by the company in one newspaper to be approved by the Registrar published in the State nearest to the registered office of the company.

(6) A certificate or an advertisement in the Government Gazette under this section shall be conclusive evidence of the alteration to which it relates.

General Provisions with respect to Memorandum and Articles.

30. (1) The memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member and contained covenants on the part of each member, his heirs, executors, and administrators, to observe all the provisions of the memorandum and of the articles subject to the provisions of this Act.

(2) All money payable by any member to the company under the memorandum or articles shall be a specialty debt due from him to the company.

31. (1) In the case of a company limited by guarantee and not having a share capital, and registered after the commencement of this Act, every provision in the memorandum or articles, or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

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

32. Notwithstanding anything in the memorandum or articles of a company, no member of the company shall, subject as hereinafter in this section provided, be bound by any alteration made in the memorandum or articles after the date on which he became a member if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the
PART II.

Copies of memorandum and articles to be supplied on demand.
Imp., s. 23.
Vic., s. 26.
Tas., s. 19.
S.A., s. 22.

Issued copy of memorandum to embody alterations.
Imp., s. 24.
New.

Powers implied in memorandum.
New.

Definition of member.
Imp., s. 25.
Vic., s. 30.
Tas., s. 32.
S.A., s. 26.

Meaning of "proprietary company."" 
Vic., s. 130.
Tas., s. 146.
New.

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alteration is made or in any way increases his liability as at that date to contribute to the share capital of or otherwise to pay money to the company: Provided that this section shall not apply in any case where the member agrees in writing to be bound by the particular alteration either before or after it is made.

33. (1) A company shall, on being so required by any person, send to him a copy of the memorandum and of the articles (if any), and a copy of any Act of Parliament which alters the memorandum, subject to payment in the case of a copy of the memorandum and of the articles, of three shillings or such less sum as the company may prescribe, and in the case of a copy of an Act, of such sum, not exceeding the published price thereof as the company may require.

(2) If a company makes default in complying with the requirements of this section the company and every officer of the company who is in default shall be liable for each offence to a fine not exceeding five pounds.

34. (1) Where any alteration is made in the memorandum of a company, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration.

(2) If, where any such alteration has been made, the company at any time after the date of the alteration issues any copies of the memorandum which are not in accordance with the alteration, it shall be liable to a fine not exceeding One Pound for each copy so issued, and every officer of the company who is in default shall be liable to a like penalty.

35. Subject to this Act and to any special restrictions or prohibitions in the memorandum or articles of any company, and without prejudice to any other powers implied by law, every company shall have all the powers set forth in the Second Schedule hereto.

Membership of Company.

36. (1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.

(2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.

Proprietary and Private Companies.

37. (1) For the purposes of this Act the expression "proprietary company" means any company limited by shares not being a no-liability company which—

i. by its memorandum or articles—

(a) restricts the right to transfer its shares; and
(b) limits the number of its members (exclusive of persons who are in the employment of the company, and of persons who having been formerly in the employment of the company, were while
in such employment and have continued after
the determination of such employment to be
members of the company) to fifty; and

(c) prohibits any invitation to the public to subscribe
for any shares, debentures, stock, or bonds of
the company; and

(d) prohibits the company from receiving deposits,
except from its members for fixed periods or
payable at call, whether bearing or not bearing
interest; and

II. has received a certificate of incorporation in which the
Registrar certifies that the company is a proprietary
company.

(2) The word "proprietary" shall form part of the name of a
proprietary company, and shall be inserted immediately before the
word "limited".

(3) A company limited by shares not being a no-liability company
may by special resolution alter—

I. the name of the company by inserting the word "pro-
prietary" immediately before the word "limited";
and

II. the provisions of its memorandum or articles so as to
restrict, limit, and prohibit, as aforesaid,
and upon the filing of a copy of the resolution the Registrar may
issue a certificate of incorporation altered so as to certify that the
company is a proprietary company.

(4) Upon the application of a company and upon the filing of an
affidavit by a director or manager of the company that the articles
of association of the company restrict, limit, and prohibit as afores-
said, the Registrar may issue a certificate of incorporation altered
so as to certify that the company is a proprietary company.

(5) A proprietary company may, subject to anything contained
in the memorandum or articles, by passing a special resolution,
determine—

I. that the word "proprietary" be omitted from its name;
and

II. that the company be a public company,
and by filing with the Registrar a copy thereof, and also such a
statement in lieu of prospectus as the company (if a public company)
would have had to file before allotting any of its shares or debentures,
together with such a statutory declaration as the company (if a
public company) would have had to file before commencing business,
turn itself into a public company; and thereupon the restrictions,
limitations, and prohibitions mentioned in subsection (1) of this
section and embodied in the memorandum or articles of association
of such company, shall cease to apply to such company.
PART II.

Private company. New.

38. (1) For the purposes of this Act a "private company" means a company limited by shares and not being a no-liability company which—

(a) by its memorandum or articles prohibits any invitation to the public to subscribe for any shares, debentures, stock, or bonds of the company; and

(b) by its memorandum or articles provides that any person from whom the company has received and on behalf of whom the company for the time being holds deposits, for fixed periods or payable at call whether bearing or not bearing interest shall be entitled to demand a copy of the last balance-sheet of the company (including every document required by law to be annexed thereto) and the report of the company's auditors thereon, in the same manner as a member of the company; and

(c) has received a certificate of incorporation in which the Registrar certifies that the company is a private company.

(2) A company limited by shares not being a no-liability company may by special resolution determine to be a private company and—

1. alter the provisions of its memorandum or articles so as to prohibit and provide as aforesaid; and

2. in the case of a proprietary company of which the word "Proprietary" forms part of the name of the company, change the name of the company by striking out the word "Proprietary",

and upon the filing of a copy of the resolution and upon the registration of such alterations of the memorandum or articles as aforesaid and upon filing a statutory declaration by a director or manager of the company that the memorandum or articles of association of the company comply with the provisions of subsection (1) hereof and stating whether or not the company has invited the public to subscribe for any shares, debentures, stock, or bonds of the company and has, or has not, issued any shares, debentures, stock, or bonds pursuant to any application received on any such invitation, the Registrar may issue a certificate of incorporation altered so as to certify that the company is a private company: Provided that in the case of a company as mentioned in section 39 such resolution shall be confirmed as therein provided.

(3) A private company may subject to anything contained in the memorandum or articles by passing a special resolution determine that the company be a public company and by filing with the Registrar a copy thereof, and also such a statement in lieu of a prospectus as the company (if a public company) would have had to file before allotting any of its shares or debentures together with such a statutory declaration as the company (if a public company) would have had to file before commencing business, turn itself into a public company and thereupon the prohibition
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PART II.

39. (1) Where a company limited by shares not being a no-liability company which has passed a special resolution under subsection (2) of section 38 of this Act has before or after the commencement of this Act, invited the public to subscribe for any shares, debentures, stock, or bonds of the company, and has issued any shares, debentures, stock, or bonds pursuant to any application received on the invitation, the special resolution shall not be effective unless confirmed by the Court.

(2) For the purposes of this section any special resolution as aforesaid shall be deemed to be a proposed arrangement between the company and the class of members holding shares, debentures, stock, or bonds issued as mentioned in subsection (1) of this section within the meaning of section 171 of this Act and the provisions of subsections (1), (2), and (3) of that section shall apply thereto.

(3) On an application to confirm a special resolution as aforesaid, the Court may order any persons holding together not more than one-tenth of the shares, debentures, stock, or bonds which were issued as mentioned in subsection (1) of this section and who oppose the confirmation of the special resolution to sell and transfer their shares, debentures, stock, or bonds to any person to be named by the Court at the fair price thereof, which price in case of disagreement may be fixed by the Court. The Court may make such further or other order for the purpose of completing any such sale or transfer, and as to costs as it sees fit.

(4) An order under this section confirming a special resolution shall have no effect until an office copy of the order has been filed with the Registrar.

40. Where two or more persons hold one or more shares in a proprietary company jointly they shall for the purposes of section 37 of this Act be treated as a single member.

41. (1) The Court may, on the application of the Attorney-General or of any member or creditor of any company certified by the Registrar to be a proprietary company or private company, as the case may be, determine whether such company is a proprietary company or private company, within the meaning of this Act, and if the Court determines that it is not a proprietary company or private company it shall declare accordingly, and, in the case of a proprietary company, order that the word "Proprietary" be removed from its name; and thereupon the company shall be a public company under this Act, and subject to all the provisions and conditions herein contained relating to public companies.

(2) If after the expiration of six months from the commencement of this Act any company trades or carries on business under any name or title of which the word "Proprietary" forms part, such company
PART II

Alterations to memorandum and articles of proprietary or private companies. New.

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unless it has received from the Registrar a certificate of incorporation certifying that the company is a proprietary company, and every officer of the company who is in default shall be liable to a penalty not exceeding Two Pounds for every day upon which that name or title has been used.

42. (1) Where any alteration has been made under sections 37 or 38 in the memorandum or articles of a company, every copy of the memorandum or articles issued after the date of the alteration shall be in accordance with the alteration.

(2) Where the memorandum or articles of a company includes the provisions which by sections 37 and 38 are required to be included therein in order to constitute the company a proprietary company or private company, as the case may be, and default is made in complying with any of those provisions the company shall thereupon cease to be entitled to the privileges and exemptions conferred on proprietary companies or private companies under the provisions of this Act, and this Act shall apply to the company as if it were a public company: Provided that the Court on being satisfied that the failure to comply or default in complying with the conditions was accidental, or due to inadvertence, or to some other sufficient cause, or that on other grounds, it is just and equitable to grant relief, may, on the application of the company or any other person interested, and on such terms and conditions as seem to the Court just and expedient, order that the company be relieved from such consequences as aforesaid.

(3) If any company, being a private company or proprietary company, alters its memorandum or articles in such manner that they no longer include the provisions which, under sections 37 and 38 respectively of this Act, are required to be included in the memorandum or articles of a company in order to constitute it a private company or proprietary company for the purposes of this Act, the company shall, as on the date of the alteration, cease to be a private company or proprietary company, as the case may be, and shall, within a period of seven days after the said date, file with the Registrar such a statement in lieu of prospectus as the company if a public company would have had to file before allotting any of its shares or debentures, together with such a statutory declaration as the company if a public company would have had to file before commencing business.

(4) If a company makes default in complying with any requirement of this section, the company, and every officer of the company who is in default, shall be liable to a default fine of Twenty Pounds.

Reduction of Number of Members below Legal Minimum.

43. If at any time the number of members of a company is reduced in the case of a proprietary company below two, or in the case of any other company below five, and it carries on business for more than six months, while the number is so reduced every
person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with fewer than two members or five members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be sued for the same without joinder in the action of any other member.

Contracts, Etc.

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

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

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

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

(2) A contract made according to this section shall be effectual in law, and shall bind the company and its successors and all other parties thereto.

(3) A contract made on behalf of a company may be varied or discharged in the same manner in which it is authorised by this section to be made.

45. A bill of exchange or promissory note shall be deemed to have been made, accepted, or indorsed on behalf of a company if made, accepted, or indorsed in the name of, or by or on behalf of or on account of, the company by any person acting under its authority.

46. (1) A company may by writing under its common seal empower any person, either generally or in respect of any specified matters, as its attorney to execute deeds on its behalf in any place not situate in the State.

(2) A deed signed by such attorney on behalf of the company and under his seal shall bind the company and have the same effect as if it were under its common seal.

47. (1) A company whose objects require, or comprise the trans-
an official seal which shall be a fac-simile of the common seal of the company with the addition on its face of the name of the territory, district, or place where it is to be used.

(2) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

(3) A company having an official seal may, by writing under its common seal, authorise any person appointed for the purpose in any territory, district, or place outside the State to affix the same to any deed or other document to which the company is party in that territory, district, or place.

(4) The authority of any such agent shall, as between the company and any person dealing with the agent, continue during the period (if any) mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.

(5) The person affixing any such official seal shall, by writing under his hand certify on the deed or other document to which the seal is affixed, the date and place of affixing the same.

48. A document or proceeding requiring authentication by a company may be signed by a director, manager, or other authorised officer of the company, and need not be under its common seal.

PART III.
SHARE CAPITAL AND DEBENTURES.

Prospectus.

49. (1) Every prospectus issued by or on behalf of a company, or in relation to any intended company, shall be dated; and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus.

(2) A copy of every such prospectus, signed by every person who is named therein as a director or proposed director of the company or by his agent authorised in writing, shall be filed with the Registrar on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so filed.

(3) The Registrar shall not accept any prospectus unless it is dated and signed in manner required by this section.

(4) Every prospectus shall state on the face of it that a copy has been filed as required by this section.
(5) If default is made in complying with any of the provisions of this section the company and every person who is knowingly a party to the default shall, in the case of a continuing default, be liable to a penalty not exceeding Five Pounds for every day during which the default continues, and in case of any other default to a penalty not exceeding Twenty-five Pounds.

50. (1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must state the matters specified in Part A of this section and set out the reports specified in Part B of this section, and the said Parts A and B shall have effect subject to the provisions contained in Part C of this section.

(2) A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(3) It shall not be lawful to issue any form of application for shares in or debentures of a company unless the form is issued with a prospectus which complies with the requirements of this section: Provided that this subsection shall not apply if it is shown that the form of application was issued either—

(a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or

(b) in relation to shares or debentures which were not offered to the public.

If any person acts in contravention of the provisions of this subsection, he shall be liable to a fine not exceeding One Hundred Pounds.

(4) In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—

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

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

(c) the non-compliance or contravention was in respect of matters which in the opinion of the Court dealing with the case were immaterial or was otherwise such as ought, in the opinion of the Court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph (15) of
Part A of this section, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(5) This section shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favor of other persons, or to the issue to existing members of a transferor company within the meaning of section 251 of a prospectus or form of application relating to shares in a transferee company within the meaning of that section, but, subject as aforementioned, this section shall apply to a prospectus or a form of application whether issued on or with reference to the formation of a company or subsequently.

(6) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section.

Part A.—The following matters are required to be stated in a prospectus pursuant to this section):

(1) Except where the prospectus is published as a newspaper advertisement, the contents of the memorandum, with the names, descriptions, and addresses of the signatories, and the number of shares subscribed for by them respectively.

(2) The number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company.

(3) The number of shares, if any, fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors.

(4) The names, descriptions, and addresses of the directors or proposed directors.

(5) Where shares are offered to the public for subscription particulars as to—

(i) the minimum amount which, in the opinion of the directors, must be raised by the issue of those shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters:

(a) the purchase price of any property purchased, or to be purchased, which is to be defrayed in whole or in part out of the proceeds of the issue;

(b) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company;
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(c) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters;

(d) working capital; and

(ii.) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue, and the sources out of which those amounts are to be provided.

(6) The amount payable on application and allotment on each share, and, in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, the amount actually allotted, and the amount, if any, paid on the shares so allotted.

(7) The number and amount of shares and debentures which, within the two preceding years, have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued.

(8) The names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares, or debentures to the vendor, and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor.

(9) The amount, if any, paid or payable as purchase money in cash, shares, or debentures, for any such property, as aforesaid, specifying the amount, if any, payable for goodwill.

(10) The amount, if any, paid within the two preceding years, or payable, as commission (but not including commission to sub-underwriters) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of the company, or the rate of any such commission.

(11) The amount or estimated amount of preliminary expenses.

(12) The amount paid within the two preceding years or intended to be paid to any promoter, and the consideration for any such payment.

(13) The dates of and parties to every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than two years before the date of issue of the prospectus, and a reasonable time and place at which any such material contract or a copy thereof may be inspected.
(14) The names and addresses of the auditors, if any, of the company.

(15) Full particulars of the nature and extent of the interest, if any, of every director in the promotion of, or in the property proposed to be acquired by the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as a director, or, otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.

(16) If the prospectus invites the public to subscribe for shares in the company and the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

(17) In the case of a company which has been carrying on business, or of a business which has been carried on for less than three years, the length of time during which the business of the company or the business to be acquired, as the case may be, has been carried on.

Part B.—The following reports are required to be stated in a prospectus pursuant to this section:

(1) A report by the auditors of the company with respect to the profits of the company in respect of each of the three financial years immediately preceding the issue of the prospectus, and with respect to the rates of the dividends, if any, paid by the company in respect of each class of shares in the company in respect of each of the said three years, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years, and if no accounts have been made up in respect of any part of the period of three years ending on a date three months before the issue of the prospectus, containing a statement of that fact.

(2) If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in the purchase of any business, a report made by public accountants who shall be named in the prospectus upon the profits or losses of the business in respect of each of the three financial years immediately preceding the issue of the prospectus.

Part C.—The following provisions apply to paragraphs A and B of this section:

(1) The provisions of this section with respect to the memorandum and the qualification, remuneration and interest of directors, the
names, descriptions and addresses of directors or proposed directors, and the amount or estimated amount of the preliminary expenses, shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

(2) Every person shall for the purposes of this section be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—

(a) the purchase money is not fully paid at the date of the issue of the prospectus;

(b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus;

(c) the contract depends for its validity or fulfilment on the result of that issue.

(3) Where any property to be acquired by the company is to be taken on lease, this section shall have effect as if the expression "vendor" included the lessor and the expression "purchase money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.

(4) For the purposes of paragraph (8) of Part A of this section where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors.

(5) If in the case of a company which has been carrying on business, or of a business which has been carried on for less than three years, the accounts of the company or business have only been made up in respect of two years or one year, Part B of this section shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years.

(6) The expression "financial year" in Part B of this section means the year in respect of which the accounts of the company or of the business, as the case may be, are made up, and where by reason of any alteration of the date on which the financial year of the company or business terminates the accounts of the company or business have been made up for a period greater or less than a year, that greater or less period shall for the purpose of the said Part of this section be deemed to be a financial year.

51. Notwithstanding anything in the two last preceding sections where a prospectus complying with those sections has been issued it shall not be necessary in an advertisement of that prospectus in a public newspaper to insert the particulars or matters required by those sections, except those with respect to the date, the fact that a copy has been duly filed, the names, descriptions, and addresses of the directors or proposed directors, and the number of shares subscribed for by them respectively, and with respect to the minimum
Restriction on alteration of terms mentioned in prospectus.
Imp., s. 36. Vic., s. 91. Tas., s. 91.
Liability for statements in prospectus.
Imp., s. 37. Vic., s. 92. Tas., s. 92. S.A., s. 221 (2) (3).

52. A company having a share capital shall not previously to the statutory meeting vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, except subject to the approval of the statutory meeting. This section shall not apply to a proprietary company or a private company.

53. (1) Where a prospectus invites persons to subscribe for shares in or debentures of a company—

(a) every person who is a director of the company at the time of the issue of the prospectus;

(b) every person who has authorised himself to be named, and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;

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

(d) every person who has authorised the issue of the prospectus, shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith unless it is proved—

I. that having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

II. that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or
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III. that after the issue of the prospectus and before allotment thereunder he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal and of the reason therefor;

iv. that—

(a) as regards every untrue statement not purporting to be made on the authority of an expert, or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures as the case may be believe, that the statement was true; and

(b) as regards every untrue statement purporting to be a statement by an expert, or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement or was a correct and fair copy of or extract from the report or valuation:

Provided that a person shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making the statement, report, or valuation was competent to make it; and

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

(2) Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus and has not authorised or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof shall be liable to indemnify the person named as aforesaid against all damages, costs, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or in defending himself against any legal proceedings brought against him in respect thereof.

(3) Every person who, by reason of his being a director or named as a director, or as having agreed to become a director, or of his having authorised the issue of the prospectus, or of his being a promoter, becomes liable to make any payment under this section,
may recover contribution as in cases of contract from any other person who if sued separately would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

(4) For the purposes of this section—

the expression "promoter" means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person who acted solely in a professional capacity for persons engaged in procuring the formation of the company:

the expression "expert" includes engineer, valuer, accountant, and any other person whose profession gives authority to a statement made by him.

54. (1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company, and all enactments and rules of law as to the contents of prospectuses and to liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures, but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of misstatements contained in the document or otherwise in respect thereof.

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

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

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

(3) Section 49 of this Act as applied by this section shall have effect as though the persons making the offer were persons named in a prospectus as directors of a company, and section 50 of this Act as applied by this section shall have effect as if it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus—
(a) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates; and

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

(4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document aforesaid is signed on behalf of the company or firm by two directors of the company or not less than half of the partners, as the case may be, and any such director or partner may sign by his agent authorised in writing.

55. (1) Where any shares or debentures have been offered to the public for subscription, all application and other moneys paid by any applicant on account of shares or debentures prior to the allotment thereof shall, until the allotment of such shares or debentures, be held by the company, or, in the case of an intended company, by the persons named in the prospectus as provisional directors and the promoters upon trust for the applicant: Provided that nothing contained in this section shall place any obligation or duty upon any bank or third person with whom any such moneys may have been deposited to inquire into or see to the proper application of such moneys so long as such bank or third person acts in good faith.

(2) If default is made in complying with any of the provisions of this section, in the case of a company, every officer of the company in default, and, in the case of an intended company, every person named in the prospectus as a proposed director and every promoter who knowingly and willfully authorises or permits the default shall, in addition to the liability imposed by the next following section, be guilty of an offence and liable to a penalty not exceeding One Hundred Pounds.

56. (1) No allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which, in the opinion of the directors, must be raised by the issue of share capital in order to provide for the matters specified in sub-paragraph (i.) of paragraph (5) of Part A of section 50, less the amounts mentioned in sub-paragraph (ii.) of the said paragraph, or, if no amount is so stated, then the whole amount of the share capital so offered for subscription has been subscribed, and the sum payable on application for the amount so stated or for the whole amount offered for subscription has been paid to and received by the company.
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(2) The amount so stated in the prospectus and the whole amount aforesaid shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Act referred to as “the minimum subscription”.

(3) The amount payable upon application on each share shall not be less than ten per centum of the nominal amount of the share.

(4) If the conditions aforesaid have not been complied with on the expiration of three months after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and if any such money is not so repaid within four months after the issue of the prospectus the directors of the company, or, in the case of an intended company, the persons named in the prospectus as the proposed directors and the promoters shall be jointly and severally liable to repay that money, with interest at the rate of five per centum per annum from the expiration of the period of four months: Provided that a director, a person named in the prospectus as a proposed director or a promoter, shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

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

57. (1) A company having a share capital which does not issue a prospectus on or with reference to its formation, or which has issued a prospectus but has not proceeded to allot upon applications received in consequence of the prospectus, any of the shares offered to the public for subscription, 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 filed with the Registrar a statement in lieu of prospectus signed by every person who is named therein as a director or a proposed director of the company or by his agent authorised in writing in a form containing the particulars set out in the Fourth Schedule to this Act.

(2) This section shall not apply to a no-liability company, private company, or a proprietary company.

(3) If a company acts in contravention of this section, the company and every director of the company who knowingly authorises or permits the contravention shall be liable to a fine not exceeding Fifty Pounds.

58. (1) An allotment made by a company to an applicant in contravention of the last two preceding sections shall be voidable at the instance of the applicant within one month after the holding of
the statutory meeting of the company, or, if the company is not required to hold a statutory meeting or the allotment is made after the holding of the statutory meeting within three months after the date of allotment and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

(2) If any director of a company knowingly contravenes, or permits or authorises the contravention of, any of the provisions of sections 56 and 57 he shall be liable to compensate the company and the allottee respectively for any loss, damage, or costs which the company or the allottee may have sustained or incurred thereby:

Provided that proceedings to recover any such loss, damages, or costs shall not be commenced after the expiration of two years from the date of the allotment.

59. (1) Whenever a company limited by shares or a company limited by guarantee and having a share capital makes any allotment of its shares the company shall within one month thereafter file with the Registrar—

(a) a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses, and descriptions of the allottees, and the amount (if any) paid or deemed to be paid or due and payable on each share; and

(b) in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing constituting the title of the allottee to the allotment, together with any contract of sale, or for services or other consideration in respect of which that allotment was made, or where such contract is not reduced to writing, and the issue of the shares is made pursuant to a provision in the memorandum or articles, a statement to that effect identifying the particular provision and giving particulars of the consideration in respect of which the allotment was made and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(2) If default is made in complying with the requirements of this section every director, manager, or other officer of the company who is knowingly a party to the default shall be liable to a penalty not exceeding Twenty Pounds for every day during which the default continues:

Provided that in case of default in filing with the Registrar within one month after the allotment, any document required to be filed by this section, the company or any person interested may apply to the Court for relief, and the Court, if satisfied that the omission to file the document was accidental or due to inadvertence, or that it is just and equitable to grant relief, may make an order extending the time for the filing of the document for such period as the Court may think proper.

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Provision where no contract registered.

Tas., s. 96.

N.Z., s. 98.

Commissions.

Imp., s. 43.

Vic., s. 97.

Tas., s. 97.

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

(a) were allotted and taken in good faith at least six years prior to the commencement of this Act; or

(b) were allotted and taken in good faith and for a substantial consideration; or

(c) after the allotment thereof were acquired by any person bona fide without notice of the omission aforesaid—the allottee or holder of such shares shall not be liable to pay to the company in respect of such shares any sum other than the difference between the nominal amount of the shares and the amounts paid up in cash or treated or deemed to have been so paid up thereon.

Commissions and Discounts.

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

(a) the payment of the commission is authorised by the articles;

(b) the commission paid or agreed to be paid does not exceed ten per centum of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is less:

(c) the amount or rate per centum of the commission paid or agreed to be paid is—

(i.) in the case of shares offered to the public for subscription, disclosed in the prospectus; or

(ii.) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and filed before the payment of the commission, with the Registrar, and where a circular or notice not being a prospectus inviting subscription for the shares is issued also disclosed in that circular or notice; and

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

(2) Save as aforesaid no company shall apply any of its shares or capital money, either directly or indirectly, in payment of any commission, discount, or allowance to any person in consideration for his subscribing or agreeing to subscribe, whether absolutely or
conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase-money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase-money or contract price or otherwise. This subsection shall not apply to a no-liability company.

(3) Nothing in this section shall affect the power of any company to pay such reasonable brokerage as it has, before the commencement of this Act, been lawful for a company to pay.

(4) A vendor to, promoter of, or other person who receives payment in money or shares from a company shall have, and shall be deemed always to have had, power to apply any part of the money or shares so received in payment of any commission the payment of which if made directly by the company would have been legal under this section.

(5) Unless otherwise provided by the articles or by a resolution of the company in general meeting, no commission shall be paid until after the shares in respect whereof such commission is payable, have been allotted and the allotment moneys payable in respect thereof have been received by the company.

(6) If default is made in complying with the provisions of this section relating to the filing with the Registrar of the statement in the prescribed form, the company and every officer of the company who is in default shall be liable to a fine not exceeding Ten Pounds.

61. (1) Where a company has paid any sums by way of commission in respect of any shares or debentures, or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed, or so much thereof as has not been written off, shall be stated in every balance-sheet of the company until the whole amount thereof has been written off.

(2) If default is made in complying with this section the company and every officer of the company who is in default shall be liable to a default fine.

62. (1) Subject as provided in this section, it shall not be lawful for a company to give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or other dealing made or to be made by any person of or in any shares in the company: Provided that nothing in this section shall be taken to prohibit—

(a) where the lending of money is part of the ordinary business of a company, the lending of money by the company in the ordinary course of its business:

(b) the provision by a company in accordance with any scheme for the time being in force, of money for the purchase by trustees of fully-paid shares in the company to be held by or for the benefit of employees of the company, including any director holding a salaried employment or office in the company:
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(e) the making by a company of loans to persons other than directors, bona fide in the employment of the company with a view to enabling those persons to purchase fully-paid shares in the company to be held by themselves by way of beneficial ownership.

(2) The aggregate amount of any outstanding loans made under the authority of provisos (b) and (e) to subsection (1) of this section shall be shown as a separate item in the balance-sheet.

(3) If a company acts in contravention of the provisions of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding Fifty Pounds.

Issue of Redeemable Preference Shares and Shares at a Discount.

63. (1) Subject to the provisions of this section, a company limited by shares may, if so authorised by its articles, issue preference shares which are, or at the option of the company are to be liable to be redeemed.

(2) No such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purpose of the redemption.

(3) No such shares shall be redeemed unless they are fully paid.

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

(5) Where any such shares are redeemed out of the proceeds of a fresh issue, the premium (if any) payable on redemption must have been provided for out of the profits of the company before the shares are redeemed.

(6) There shall be included in every balance-sheet of a company which has issued redeemable preference shares a statement specifying what part of the issued capital of the company consists of such shares and the date on or before which those shares are, or are to be liable, to be redeemed.

If a company fails to comply with the provisions of this subsection, the company and every officer of the company who is in default shall be liable to a fine not exceeding Fifty Pounds.

(7) Subject to the provisions of this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by the articles of the company.
(8) Where in pursuance of this section a company has redeemed or is about to redeem any preference shares, it may issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not for the purposes of any enactments relating to fees payable on an increase of capital be deemed to be increased by the issue of shares in pursuance of this subsection: Provided that, where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to fees payable on an increase of capital, be deemed to have been issued in pursuance of this subsection unless the old shares are redeemed within one month after the issue of the new shares.

(9) Where new shares have been issued in pursuance of the last foregoing subsection, the capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company, up to an amount equal to the nominal amount of the shares so issued in paying up unissued shares of the company to be issued to members of the company as fully-paid bonus shares.

64. (1) Subject as hereinafter provided, a company may issue at a discount shares in the company of a class already issued: Provided that—

(a) the issue of the shares at a discount must be authorised by resolution passed in general meeting of the company, and must be sanctioned by the Court:

(b) the resolution must specify the maximum rate of discount at which the shares are to be issued:

(c) not less than one year must at the date of the issue have elapsed since the date on which the company was entitled to commence business:

(d) the shares to be issued at a discount must be issued within one month after the date on which the issue is sanctioned by the Court or within such extended time as the Court may allow.

(2) Where a company has passed a resolution authorising the issue of shares at a discount, it may apply to the Court for an order sanctioning the issue, and on any such application the Court, if, having regard to all the circumstances of the case, it thinks proper so to do, may make an order sanctioning the issue on such terms and conditions as it thinks fit.

(3) Every prospectus relating to the issue of the shares and every balance-sheet issued by the company subsequently to the issue of the shares must contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the making or issue of the document in question.

If a company makes default in complying with the requirements of this subsection, the company and every officer of the company who is in default shall be liable to a default fine.
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Power of company to arrange for different amounts being paid on shares.
Imp., s. 48.  
Vic., s. 46.  
Tas., s. 41.  
S.A., s. 79.

Reserve liability of company.
Imp., s. 49.  
Vic., s. 66.  
Tas., s. 66.  
S.A., s. 78.

Power of company limited by shares to alter its share capital.
Imp., s. 50.  
Vic., s. 48.  
Tas., s. 48.

Miscellaneous Provisions as to Capital.

65. A company, if so authorised by its articles or by special resolution, may do any one or more of the following things, namely:—

I. Make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares:

II. Accept from any member who assents thereto the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up:

III. Pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

66. (1) A company may, by its articles or by special resolution, determine that any portion of its share capital which has not been already called up shall not be capable of being called up except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

(2) Such resolution shall, within fifteen days from the date of passing, be advertised in the Gazette and filed with the Registrar, who shall note the same on the memorandum; the note of the resolution shall be deemed to be an alteration of the memorandum within the meaning of section 34.

67. (1) A company limited by shares, or a company limited by guarantee and having a share capital, if so authorised by its articles may alter the conditions of its memorandum as follows; that is to say, it may—

I. increase its share capital by new shares of such amount as it thinks expedient:

II. consolidate and divide all or any of its share capital into shares of larger amount than its existing shares:

III. convert all or any of its paid-up shares into stock, and reconvert that stock into paid-up shares of any denomination:

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

V. cancel shares which at the date of the passing of the resolution in that behalf have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.
(2) The powers conferred by this section shall be exercised by the company in general meeting.

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

68. If a company having a share capital has—

(a) consolidated and divided its share capital into shares of larger amount than its existing shares; or
(b) converted any of its shares into stock; or
(c) re-converted stock into shares; or
(d) subdivided its shares or any of them; or
(e) redeemed any redeemable preference shares; or
(f) cancelled any shares, otherwise than in connection with a reduction of share capital under section 74 of this Act, it shall within one month after so doing give notice thereof to the Registrar specifying, as the case may be, the shares consolidated, divided, converted, redeemed, or cancelled, or the stock re-converted.

If a company makes default in complying with this section, the company and every officer of the company who is in default, shall be liable to a default fine.

69. (1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, and where a company limited by guarantee has increased the number of its members beyond the registered number, it shall file with the Registrar, within fifteen days after the passing of the resolution authorising the increase, notice of the increase of capital or number of members, and the Registrar shall record the increase and a copy of such notice shall be inserted in the Gazette.

(2) The notice to be given as aforesaid shall include such particulars as are prescribed with respect to the classes of shares affected and the conditions subject to which the new shares have been or are to be issued, and there shall be forwarded to the Registrar together with the notice a printed or typewritten copy of the resolution authorising the increase.

(3) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

70. An unlimited company having a share capital may, by its resolution for registration as a limited company, in pursuance of this Act, do either or both of the following things, namely:—

1. Increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased
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Power of company to pay interest out of capital in certain cases.

Imp., s. 54.
Vic., s. 99.
Tas., s. 99.

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capital shall be capable of being called up except in the event and for the purposes of the company being wound up:

II. Provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

71. (1) Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up, for the period and subject to the conditions and restrictions in this section mentioned, and may charge the same to capital as part of the cost of construction of the work or building or the provision of plant:

Provided that—

(a) no such payment shall be made unless the same is authorised by the articles or by special resolution:

(b) no such payment, whether authorised by the articles or by special resolution, shall be made without the previous approval of the Court:

(c) before sanctioning any such payment the Court may at the expense of the company appoint a person to inquire and report to it as to the circumstances of the case, and may before making the appointment require the company to give security for the payment of the costs of the inquiry:

(d) the payment shall be made only for such period as may be determined by the Court, and such period shall in no case extend beyond the close of the half-year next after the half-year during which the works or buildings have been actually completed or the plant provided:

(e) the rate of interest shall in no case exceed five per centum per annum, or such lower rate as may for the time being be prescribed by the Rules of Court:

(f) the payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid:

(g) the accounts of the company shall show the share capital on which and the rate at which interest has been paid out of capital during the period to which the accounts relate.

(2) If default is made in complying with proviso (g) to subsection (1) of this section, the company and every officer of the company who is in default, shall be liable to a fine not exceeding Twenty Pounds.
72. (1) In a limited company the liability of the directors or managers or of the managing director may, if so provided by the memorandum, be unlimited.

(2) In a limited company in which the liability of a director or manager is unlimited, the directors or the managers of the company (if any), and the member who proposes a person for election or appointment to the office of director or manager, shall add to that proposal a statement that the liability of the person holding that office will be unlimited; and the promoters, directors, and managers of the company, or one of them, shall, before the person accepts the office or acts therein, give him notice in writing that his liability will be unlimited.

(3) If any director, manager, or proposer makes default in adding such a statement, or if any promoter, director, or manager, makes default in giving such a notice, he shall be liable to a penalty not exceeding Fifty Pounds, and shall also be liable for any damage which the person so elected or appointed may sustain from the default; but the liability of the person elected or appointed shall not be affected by the default.

73. (1) A company, if so authorised by its articles, may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors or managers, or of any managing director.

(2) Upon the passing of any such special resolution the provisions thereof shall be as valid as if they had been originally contained in the memorandum.

(3) The resolution shall be deemed to be an alteration of the memorandum within the meaning of section 34.

Reduction of Share Capital.

74. (1) Subject to confirmation by the Court, a company having a share capital, but not being a no-liability company, if so authorised by its articles, may by special resolution reduce its share capital in any way, and in particular (without prejudice to the generality of the foregoing power), may—

I. extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or

II. either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or

III. either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company,

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

(2) A special resolution under this section is in this Act called a resolution for reducing share capital.
PART III.

Application to Court for confirming order.

Imp., s. 56 (1).
Vic., s. 53.
Tas., s. 53.
S.A., s. 68.

Objections by creditors and settlement of list of objecting creditors.

Imp., s. 56 (2).
Vic., s. 56.
Tas., s. 56.
S.A., s. 70.

75. (1) Where a company has passed a resolution for reducing share capital, it may apply by petition to the Court for an order confirming the reduction.

(2) A resolution for reducing share capital shall be void after the expiration of two months from the date of the passing thereof unless an application is made to the Court under subsection (1) of this section within that period.

76. (1) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case, if the Court so directs, the following provisions shall have effect, subject, nevertheless, to the next following subsection:—

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

(b) The Court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible, without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction:

(c) Where a creditor entered on the list whose debt or claim is not discharged or determined does not consent to the reduction, the Court may, if it thinks fit, dispense with the consent of that creditor on the company securing payment of his debt or claim by appropriating as the Court may direct the following amount; that is to say:—

1. if the company admits the full amount of his debt or claim, or though not admitting it is willing to provide for it, then the full amount of the debt or claim;

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

(2) Where a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital, or the payment to any shareholder of any paid-up share capital, the Court may, if having regard to any special circumstances of the case it thinks proper so to do, direct that subsection (1) of this section shall not apply as regards any class or any classes of creditors.
77. (i) The Court, if satisfied that the consent of every creditor of the company who under this Act is entitled to object 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.

(2) Where the Court makes any such order, it may—

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

(b) make an order requiring the company to publish as the Court directs the reasons for reduction, or such other information in regard thereto as the Court may think expedient, with a view to giving proper information to the public, and, if the Court thinks fit, the causes which led to the reduction.

(3) Where a company is ordered to add to its name the words "and reduced," those words shall, until the expiration of the period specified in the order, be deemed to be part of the name of the company.

78. (1) The Registrar on production to him of an order of the Court confirming the reduction of the share capital of a company, and the filing with him of a copy of the order and of a minute approved by the Court showing with respect to the share capital of the company as altered by the order the amount of the share capital, the number of shares into which it is to be divided, and the amount of each share, and the amount if any at the date of the registration deemed to be paid up on each such share, shall register the order and minute.

(2) On the registration of the order and minute, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.

(3) Notice of the registration shall be published in such manner as the Court may direct.

(4) The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of capital have been complied with, and that the share capital of the company is such as is stated in the minute.

79. (1) The minute when registered, shall be deemed to be substituted for the corresponding part of the memorandum of the company, and shall be valid and alterable as if it had been originally contained therein.

(2) The substitution of any such minute as aforesaid shall be deemed to be an alteration of the memorandum within the meaning of section 34.
Liability of members in respect of reduced shares.
Imp., s. 59.
Vic., s. 60.
Tas., s. 60.
S.A., s. 73.

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80. (1) If the capital of a company is reduced a member of the company past or present shall not be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount of the share as fixed by the minute and the amount paid or the reduced amount (if any) which is to be deemed to have been paid on the share as the case may be:

Provided that if any creditor entitled in respect of any debt or claim to object to the reduction of share capital is, by reason of his ignorance of the proceedings for reduction or of their nature and effect with respect to his claim, not entered on the list of creditors, and after the reduction the company is unable within the meaning of the provisions of this Act with respect to winding-up by the Court to pay the amount of his debt or claim, then—

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

(b) if the company is wound up in any manner provided by this Act the Court on the application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list as if they were ordinary contributories in a winding-up.

(2) Nothing in this section shall affect the rights of the contributories among themselves.

81. If any director, manager, or other officer of the company—

i. wilfully conceals the name of any creditor entitled to object to the reduction; or

II. wilfully misrepresents the nature or amount of the debt or claim of any creditor,

III. aids, abets, or is privy to any such concealment or misrepresentation as aforesaid,

he shall be guilty of a misdemeanor.

Variation of Rights of Shareholders.

82. (1) If the memorandum or articles of any company, the share capital of which is divided into different classes of shares, provide for authorising the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than fifteen per cent. of the
issued shares of that class, being persons who did not consent to, or vote in favor of the resolution for the variation, may apply to the Court to have the variation cancelled, and, where any such application is made, the variation shall not have effect unless and until it is confirmed by the Court.

(2) An application under this section must be made within seven days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they appoint in writing for the purpose.

(3) On any such 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 in the application, may, if it is satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm the variation.

(4) The decision of the Court on any such application shall be final.

(5) The company shall within fifteen days after the making of an order by the Court on any such application forward a copy of the order to the Registrar and, if default is made in complying with this provision the company and every officer of the company who is in default shall be liable to a default fine.

(6) The expression "variation" in this section includes abrogation and the expression "varied" shall be construed accordingly.

Transfer of Shares and Debentures, Evidence of Title, &c.

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

(2) Each share in a company having a share capital shall be distinguished by its appropriate number.

84. Notwithstanding anything in its articles, it shall not be lawful for a company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company:

Provided that nothing in this section shall prejudice any power of the company to register as shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

85. A transfer of the share or other interest of a deceased member of a company made by his representative shall, although the representative is not himself a member, be as valid as if he had been a member at the time of the execution of the instrument of transfer.
PART III.

Registration of transfer at request of transferor.
Imp., s. 65.
Vic., s. 35.
Tas., s. 36.
New.

Notice of refusal to register transfer.
Imp., s. 66.
New.

Bringing in certificates to company for transfer.
Vic., s. 35.
Tas., s. 36.

Duties of company with respect to issue of certificates.
Imp., s. 67.
Vic., s. 100.
Tas., s. 100.

86. On the application of the transferor of any share or interest in a company the company shall enter in its register of members 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.

87. (1) If a company refuses to register a transfer of any shares or debentures, the company shall, within one month after the date on which the transfer was lodged with the company, send to the transferee notice of the refusal.

(2) If default is made in complying with this section, the company and every officer of the company who is in default, shall be liable to a default fine.

88. (1) On being requested in writing so to do by the transferor of a share in a company the company shall by writing require the person having the possession, custody, or control of the certificate for any such share and of the transfer thereof, or either of them, to bring the same into the office of the company within a period named in the requisition, not less than seven days from the date thereof, to have the share certificate cancelled or rectified and the transfer thereof registered or otherwise dealt with as the case may require.

(2) If any person refuses or neglects to comply with any such requisition as aforesaid, the said transferor may apply to the Court to issue a summons for such person to appear before the Court and show cause why the documents mentioned in the requisition should not be delivered up or produced for the purpose mentioned in the requisition; and upon appearance before the Court of any person so summoned the Court may examine such person upon oath and receive other evidence, or if he do not appear then receive evidence in his absence, and, whether he does or does not appear, order him to deliver up such documents to the company upon such terms or conditions as to the Court shall seem fit, and the cost of the summons and proceedings thereon shall be in the discretion of the Court.

(3) Lists of share certificates called in as aforesaid and not brought in, shall be exhibited in the company's office, and shall be advertised in the Gazette and in such newspapers, and at such time or times, as the company thinks fit.

89. (1) Every company shall, within one month after the allotment of any of its shares, debentures, or debenture stock, and within one month after the registration of the transfer of any such shares, debentures, or debenture stock, complete and have ready for delivery the certificates of all shares, debentures, and certificates of all debenture stock allotted or transferred unless the conditions of issue of the shares, debentures, or debenture stock otherwise provide. In this section "transfer" means a valid transfer and does not include a transfer which the company is entitled to refuse to register and does not register.
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(2) If default is made in complying with the requirements of this section the company, and every officer of the company, who is in default shall be liable to a default fine.

(3) If any company on whom a notice has been served requiring the company to make good any default in complying with the provisions of subsection (1) of this section fails to make good the default within ten days after the service of the notice, the court may, on the application of the person entitled to have the certificates or the debentures delivered to him, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order, and any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company responsible for the default.

90. A certificate under the common seal of the company specifying any shares or stock held by any member shall be prima facie evidence of the title of the member to the shares or stock.

91. The production to a company of any document which is by law sufficient evidence of probate of the will, or letters of administration of the estate, of a deceased person having been granted to some person shall be accepted by the company, notwithstanding anything in its articles, as sufficient evidence of the grant.

92. (1) A company limited by shares, if so authorised by its articles, may, with respect to any fully paid-up shares, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares therein specified, and may provide by coupons or otherwise for the payment of the future dividends on the shares included in the warrant.

(2) Such a warrant as aforesaid is in this Act termed a "share warrant".

(3) A share warrant shall entitle the bearer thereof to the shares therein specified, and the shares may be transferred by delivery of the warrant.

93. (1) If any person—

i. with intent to defraud, forges or alters, or offers, utters, disposes of, or puts off (knowing the same to be forged or altered) any share certificate, warrant, or coupon, or any document purporting to be a share certificate, warrant, or coupon, issued in pursuance of this Act;

ii. by means of any such forged or altered share certificate, warrant, coupon, or document purporting as aforesaid demands or endeavors to obtain or receive any share or interest in any company under this Act, or to receive any dividend or money payable in respect thereof, knowing the certificate, warrant, coupon, or document to be forged or altered; or

Certificate of shares or stock.
Imp., s. 68.
Vic., s. 30.
Tas., s. 31.
S.A., s. 32.
Evidence of grant of probate.
Imp., s. 69.

Issue and effect of share warrants to bearer.
Imp., s. 70.
Vic., s. 44.
Tas., s. 44.
New.

Forgery, personation, unlawfully engraving plates, etc.
Vic., s. 45.
Tas., s. 45.
S.A., s. 235.
PART III.

Right of debenture holders to inspect the register of debenture holders and to have copies of trust deed.

Imp., s 73.
Vic., s 110.
Tas., s 111.
S.A., s 13 of 1924

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III. falsely and deceitfully personates any owner of any share or interest in any company, or of any share certificate, warrant, or coupon issued in pursuance of this Act, and thereby obtains or endeavors to obtain any such share or interest or share certificate, warrant, or coupon, or receives or endeavors to receive any money due to any such owner as if the offender were the true and lawful owner, he shall be guilty of felony, and being convicted thereof shall be liable to be imprisoned for any term not exceeding ten years.

(2) If any person without lawful authority or excuse, proof whereof shall lie on him—

I. engraves or makes on any plate, wood, stone, or other material any share certificate, warrant, or coupon purporting to be a share certificate, warrant, or coupon issued or made by any particular company in pursuance of this Act, or to be a blank share certificate, warrant, or coupon, so issued or made, or to be a part of such a share certificate, warrant, or coupon; or

II. uses any such plate, wood, stone, or other material for the making or printing of any such share certificate, warrant, or coupon, or of any such blank share certificate, warrant, or coupon, or any part thereof respectively; or

III. knowingly has in his custody or possession any such plate, wood, stone, or other material, he shall be guilty of felony and being convicted thereof shall be liable to be imprisoned for any term not exceeding ten years.

Special Provisions as to Debentures.

94. (1) Every register of holders of debentures of a company shall, except when duly closed be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that at least two hours in each day are appointed for inspection:

Provided that where a company has restricted the hours during which the register of holders of debentures is open for inspection for any period less than the hours when the registered office of the company is open to the public, such restriction shall have no effect until notice thereof has has been filed with the Registrar.

(2) Every registered holder of debentures and every holder of shares in a company may require a copy of the register or any part thereof on payment of Six Pence for every one hundred words required to be copied.

(3) For the purposes of this section, a register shall be deemed to be duly closed if closed in accordance with provisions contained in the articles or in the debentures or, in the case of debenture stock,
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PART III.

95. A condition contained in any debentures, or in any deed for securing any debentures, whether issued or executed before or after the passing of this Act, shall not be invalid by reason only that the debentures are thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding.

96. (1) Where either before or after the commencement of this Act a company has redeemed any debentures previously issued—

(a) unless any provision to the contrary, whether express or implied, is contained in the articles or in any contract entered into by the company; or

(b) unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled,

the company shall have, and shall be deemed always to have had, power to re-issue the debentures, either by re-issuing the same debentures or by issuing other debentures in their place.

(2) On a re-issue of redeemed debentures the person entitled to the debentures shall have, and shall be deemed always to have had, the same priorities as if the debentures had never been redeemed.

(3) Where a company has power to re-issue debentures which have been redeemed, particulars with respect to the debentures which can be so re-issued shall be included in every balance-sheet of the company.

(4) Where a company has, either before or after the commencement of this Act, deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.
97. A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

98. (1) Where either a receiver is appointed on behalf of the holders of any debentures of the company secured by a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts referred to in paragraph (b) of subsection (4) of section 279, as debts which in case of winding-up have priority over claims of holders of debentures under any floating charge created by the company shall be paid forthwith out of any assets coming to the hands of the receiver or other person taking possession as aforesaid, in priority to any claim for principal or interest in respect to the debentures.

(2) The periods of time mentioned in section 279 of this Act shall be reckoned from the date of the appointment of the receiver or of possession being taken, whichever is later.

(3) Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

99. (1) In this section, and in sections 100 to 114, both inclusive, except where the context otherwise requires, the word "charge" means—

(a) a mortgage or charge for the purpose of securing any issue of debentures;
(b) a mortgage or charge on uncalled share capital of the company;
(c) a mortgage or charge created or evidenced by an instrument which, if executed by an individual, would require registration, or would be registrable—
   1. as a Bill of Sale;
   2. under the Liens on Fruit Act, 1923; or
   3. under the Stock Mortgages and Wool Liens Act, 1924;
(d) a mortgage or charge on land wherever situated or any interest therein, other than a mortgage or charge given to a company, which carries on the business of banking as its sole business, in the ordinary course of its banking business. In this paragraph the word "company" includes a company, however or wherever incorporated, carrying on business in South Australia whether a company within the meaning of this Act or not;
(e) a mortgage or charge on the book debts of a company;
(f) a floating charge on the undertaking or property of the company;
(g) a mortgage or charge on the calls made but not paid;
(h) a mortgage or charge on goodwill, on a patent or a licence under a patent, on a trade mark or on a copyright, or on a licence under a copyright.

(2) The expression “the fixed date” means in relation to the charges specified in paragraphs (a), (b), (c) i., (e), and (j) of subsection (1) of this section the twentieth day of November, nineteen hundred and twenty-four, and in relation to the charges specified in paragraphs (c) ii., (d), (g), and (h) of subsection (1) the day of the commencement of this Act.

100. (1) Every charge created by a company after the fixed date shall, so far as any security on the company’s property or undertaking is thereby conferred be void against the liquidator, and any creditor of the company, unless within thirty days after the date of its creation there are received by the Registrar for registration—

(a) the instrument, if any, by which the charge is created or evidenced, or a copy thereof;
(b) the prescribed particulars;
(c) a statutory declaration verifying the particulars and the execution of the instrument, and if a copy is filed verifying it as a true copy of the instrument:

Provided always that where a charge on land is registered under the provisions of The Real Property Act, 1886, or being land not under the provisions of The Real Property Act, 1886, is registered at the General Registry Office for Deeds at Adelaide, such registration shall be deemed sufficient compliance with this section, provided that such charge was lodged for registration as aforesaid within the times provided by this section.

(2) Failure to comply with this section shall not prejudice any contract or obligation for repayment of the money secured by the charge.

(3) When a charge becomes void under this section the money thereby secured shall immediately become payable.

(4) If the charge is created out of the State, thirty days after the date on which the instrument or copy could in due course of post, and if despatched with due diligence, have been received in the State shall be substituted for thirty days after the date of the creation of the charge, as the time within which the instrument or copy is to be delivered to the Registrar.

(5) If the charge is created in the State, but comprises property outside the State, the instrument creating or purporting to create the charge or a copy thereof, accompanied by a verifying statutory declaration as aforesaid, may be delivered for registration, notwithstanding that further proceedings may be necessary to make the mortgage or charge valid or effectual according to the law of the country, State, or colony in which the property is situate.
(6) If a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of this section be treated as a charge on those book debts.

(7) Where a series of debentures containing or giving by reference to any other instrument any charge, to the benefit of which the debenture holders of that series are entitled pari passu, is created by a company, it shall be sufficient if there are delivered to the Registrar within thirty days after the execution of the deed containing the charge, or if there is no such deed after the execution of any debentures of the series, or if it or they is or are executed out of this State, then within thirty days after the date on which it or they would in due course of post, if despatched with due diligence, have been received in the State, the following particulars:

(a) the total amount secured by the whole series; and
(b) the dates of the resolutions authorising the issue of the series and the date of the covering deed, if any, by which the security is created or defined; and
(c) a general description of the property charged; and
(d) the names of the trustees (if any) for the debenture holders—

together with the deed containing the charge or a verified copy thereof, or, if there is no such deed, a copy of one of the debentures of the series:

Provided that where more than one issue is made of debentures in the series there shall be delivered to the Registrar, for entry in the register, particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

(8) Where any commission, allowance, or discount has been paid or made, either directly or indirectly, by the company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be filed under this section shall include particulars as to the amount or rate per cent. of the commission, discount, or allowance so paid or made, but an omission to do this shall not affect the validity of the debentures issued: Provided that the deposit of any debentures as security for any debt of the company shall not for the purposes of this provision be treated as the issue of the debentures at a discount.

101. (1) It shall be the duty of the company to deliver to the Registrar for registration the documents and particulars required by this Part to be so delivered, but those documents and particulars may be registered on the application of any person interested in the charge to which they relate.

(2) If registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the Registrar for the registration and costs of effecting registration.
(3) If any company makes default in complying with this section, then, unless some other person has complied therewith the company and every officer thereof who is in default shall be liable to a default fine of Twenty Pounds.

102. (1) Where a company acquires any property which is subject to a charge which would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Part, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument, if any, by which the charge was created or is evidenced, to be delivered to the Registrar for registration in manner required by this Part within thirty days after the date on which the acquisition is completed.

(2) If the property is situate, and the mortgage or charge was created outside the State, thirty days after the date on which the copy of the instrument could in due course of post, and if dispatched with due diligence have been received in the State, shall be substituted for thirty days after the completion of the acquisition as the time within which the particulars and the copy of the instrument are to be delivered to the Registrar.

(3) If the company fails to comply with the requirements of this subsection, the company and every officer of the company who is in default, shall be liable to a default fine not exceeding Twenty Pounds, but the failure of the company shall not prejudice any rights which any person in whose favour the charge was made may have thereunder.

103. (1) The Registrar shall keep with respect to each Company a register in the prescribed form of all charges requiring registration under this Part, and shall on payment of the prescribed fee enter in the register with respect to every such charge the prescribed particulars.

(2) The instruments or copies of instruments delivered to the Registrar under this Part, and the register kept in pursuance of this section, shall be open to inspection by any person on payment of the prescribed fee.

(3) The Registrar shall keep an index in the prescribed form, and with the prescribed particulars, of all charges entered in the register.

(4) The Registrar shall give a certificate under his hand of the registration of any charge registered in pursuance of this Part, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this Part as to registration have been complied with.

104. (1) The company shall cause a copy of every certificate of registration given under this Part to be indorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the charge so registered:

Provided that nothing in this subsection shall be construed as requiring a company to cause a certificate of registration of any
PART III.

Entry of satisfaction.
Imp., s. 84.
Vic., s. 105.
S.A., s. 9, 1924.

Rectification of register of mortgages.
Imp., s. 85.
Vic., s. 104.
S.A., s. 8, 1924.

Registration of enforcement of security.
Imp., s. 85.
Vic., s. 102.
S.A., s. 6, 1924.

Effect of subsequent mortgages in certain cases.
Vic., s. 101.
S.A., 1924, s. 5(11).

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charge so given to be indorsed on any debenture or certificate of debenture stock which has been issued by the company before the charge was created.

(2) If default is made in complying with this section the company and every officer of the company who is in default shall, without prejudice to any other liability, be liable to a fine not exceeding Fifty Pounds.

105. The Registrar may, on evidence being given to his satisfaction that the debt for which any registered charge was given has been paid or satisfied, enter a memorandum of satisfaction on the register, and shall on payment of the prescribed fee furnish the company with a copy thereof.

106. The Court, on being satisfied that the omission to register a charge within the time required by this Part, or that the omission or misstatement of any particular with respect to any such charge or any memorandum of satisfaction was accidental or due to inadvertence or to some other sufficient cause or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the Court just and expedient, order that the time for registration be extended or, as the case may be, that the omission or misstatement be rectified.

107. (1) If any person obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager, or if any person having powers in that behalf enters into possession of any property of the company on behalf of the holders of any charge, under any powers contained in any instrument, he shall, within seven days from the date of the order or of the appointment or entry, under the said powers, give notice of the fact to the Registrar, and the Registrar shall, on payment of the prescribed fee, enter the fact in the register of charges.

(2) Where any person so appointed receiver or manager or so having entered into possession of the property of the company ceases to act as receiver or manager or goes out of possession he shall on so ceasing or going out give the Registrar notice to that effect and the Registrar shall enter the notice in the register of charges.

(3) If any person makes default in complying with the requirements of this section he shall be liable to a default fine.

108. Where a charge requiring registration under this Act is created within or on the expiration of thirty days after the creation of a prior unregistered charge, and comprises all or any part of the property comprised in the prior charge, and the subsequent charge is given as a security for the same debt as is secured by the prior charge, or for any part of that debt, then to the extent to which the subsequent charge is a security for the same debt...
or part thereof, and so far as respects the property comprised in the prior charge, the subsequent charge shall not be operative or have any validity unless it is proved to the satisfaction of the Court having cognisance of the case that it was given in good faith for the purpose of correcting some material error in the prior charge or under other proper circumstances and not for the purpose of avoiding or evading this Act.

109. Notwithstanding anything in any other Act no charge requiring registration under this Part shall require to be filed or registered or be subject to avoidance under The Bills of Sale Act, 1886, the Liens on Fruit Act, 1923, or the Stock Mortgages and Wool Liens Act, 1924.

Provisions as to Company’s Register of Charges and as to Copies of Instruments Creating Charges.

110. Every company shall cause a copy of every instrument creating a charge on any property of the company to be kept at the registered office of the company: Provided that in the case of a series of uniform debentures a copy of one debenture of the series shall be sufficient.

111. (1) Every company shall keep at the registered office of the company a register of charges, and shall enter therein all charges affecting property of the company, whether a charge within the meaning of this Part or not giving in each case a short description of the property charged, the amount of the charge, the rate of interest payable, and (except in the case of securities to bearer) the names of the persons entitled thereto.

(2) If default is made in complying with this section the company and every officer thereof in default shall be liable to a penalty not exceeding Twenty Pounds.

112. (1) The copies of instruments kept at the registered office of the company pursuant to this Part, and the register of charges so kept, pursuant to this Part, shall be open during business hours to the inspection of any creditor or member of the company without fee, and the register of charges shall also be open to the inspection of any other person on payment of such fee, not exceeding One Shilling for each inspection, as the directors fix.

(2) Any member or other person may require a copy of any of the aforesaid instruments or register, or of any part thereof, on payment of Six Pence or such less sum as the directors may fix for every hundred words or fractional part thereof required to be copied. The company shall cause any copy so required by any person to be sent to that person within a period of ten days, commencing on the day next after the day on which the requirement is received by the company.

(3) If any inspection required under this section is refused or neglected, or if any copy required under this section is not sent within the proper period, the company, and every officer of the company, who is in default, shall be liable in respect of each offence to a fine not exceeding Two Pounds, and further to a default fine of Two Pounds.
(4) In the case of any such refusal or default the Court may by order compel an immediate inspection of the instrument or register, or direct that the copies required shall be sent to the persons requiring them, and make any further order which to the Court seems proper.

113. The provisions of this Part of this Act shall extend to charges on property in South Australia which are created, and to charges on property in South Australia which is acquired, after the commencement of this Act by a Company (whether a company within the meaning of this Act or not) incorporated outside South Australia which is required to be registered under Part XII. of this Act.

Transitional Provision as to Matters Required to be Registered under this Act, but not under former Acts.

114. (1) It shall be the duty of a company within ninety days after the commencement of this Act to send to the Registrar for registration the prescribed particulars of—

(a) any charge created by the company before the date of the commencement of this Act and remaining unsatisfied at that date, which would have been required to be registered under the provisions of paragraphs (d), (g) and (h), of section 99 of this Act or under the provisions of section 113 of this Act, if the charge had been created after the commencement of this Act; and

(b) any charge to which any property acquired by the company before the commencement of this Act is subject and which would have been required to be registered under the provisions of section 102 of this Act or under the provisions of section 113 of this Act, if the property had been acquired after the commencement of this Act.

(2) The Registrar, on payment of the prescribed fee, shall enter the said particulars on the register kept by him in pursuance of this Part of this Act.

(3) If a company fails to comply with this section, the company and every director, manager, or other officer of the company, or other person who is knowingly a party to the default shall be liable to a default fine of Twenty Pounds;

Provided that the failure of the company shall not prejudice any rights which any person in whose favour the charge was made may have thereunder.

(4) For the purposes of this section, the expression "company" includes a company (whether a company within the meaning of this Act or not) incorporated outside South Australia which is required to be registered under Part XII. of this Act.
PART IV.
MANAGEMENT AND ADMINISTRATION.

Registered Office and Name.

115. (1) Every company shall, as from the day on which it begins to carry on business, or as from the third day after its incorporation, whichever is earlier, have a registered office in the State.

(2) The office shall be accessible to the public for not less than three hours between the hours of eight o'clock in the morning and ten o'clock in the evening each day for at least three days each week.

(3) All communications and notices to the company may be addressed to the company at its registered office.

(4) Notice of the situation of the registered office, the days and hours during which it is accessible to the public, and of any change therein shall be filed with the Registrar, within three days after the date fixed by subsection (1) of this section, or after the change, as the case may be, who shall record the same, and shall within ten days of the filing thereof, be advertised by the company in the Gazette and in one daily newspaper published in Adelaide.

(5) The inclusion in the annual return of a company of a statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by this subsection.

(6) If a company fails to comply with any requirement of this section, the company and every officer of the company who is in default shall be liable to a default fine.

116. (1) The directors of every company shall appoint a secretary, who shall be present at the registered office of his company by himself, or his agent or his clerk, on every day, at the hours during which the registered office is to be accessible to the public.

(2) If any default is made in complying with this section, the company or secretary in default shall be liable to a default fine.

117. (1) Every company—

(a) shall paint or affix, and keep painted or affixed, its name on the outside of its registered office and every place in which its business is carried on, in a conspicuous position in letters easily legible:

(b) shall have its name engraven in legible characters on its seal:

(c) shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of the company, and in all bills of exchange, promissory notes, indorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts, and letters of credit of the company.
PART IV.

Restriction on commencement of business.

(2) If default is made in complying with paragraph (a) or paragraph (b) of subsection (1) of this section, the company and every officer in default shall be liable to a fine not exceeding Twenty Pounds.

(3) If a director, manager, or officer of a company, or any person on its behalf—

(a) uses or authorises the use of any seal purporting to be a seal of the company wherein its name is not so engraven as aforesaid; or

(b) issues, or authorises, or signs, or authorises to be signed, on behalf of the company any bill of exchange, promissory note, endorsement, cheque, or order for money or goods wherein its name is not mentioned in manner aforesaid; or

(c) issues, or authorises the issue of any notice, advertisement, bill of parcels, invoice, receipt, or letter of credit of the company wherein its name is not mentioned in manner aforesaid,

he shall be liable to a fine not exceeding Twenty Pounds and shall further be personally liable to the holder of the bill of exchange, promissory note, cheque or order for money or goods or the amount thereof unless it is duly paid by the company.

(4) If any company director, manager or officer of a company suffers, permits or authorises the insertion in any publication whatsoever of any particulars relating to the company wherein its name is not mentioned in manner aforesaid the company and every officer of the company in default shall be liable to a fine not exceeding Twenty Pounds.

Restrictions on Commencement of Business.

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

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

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

(c) there has been filed with the Registrar a statutory declaration by the manager or one of the directors in the prescribed form that the aforesaid conditions have been complied with.

(2) Where a company having a share capital has not issued a prospectus, the company shall not commence any business or exercise any borrowing powers, unless—

(a) there has been delivered to the Registrar for registration a statement in lieu of prospectus; and
(b) every director of the company has paid to the company out of his own moneys, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash; and

(c) there has been delivered to the Registrar for registration a statutory declaration by the manager, or one of the directors in the prescribed form that paragraph (b) of this subsection has been complied with.

(3) The Registrar shall, on the filing of the said statutory declaration, and in the case of a company which is required by this section to deliver a statement in lieu of prospectus, of such a statement certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled.

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

(5) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(6) If any company commences business or exercises borrowing powers in contravention of this section every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding Twenty Pounds for every day during which the contravention continues.

(7) This section shall not apply to a private company, or a proprietary company, or to a company registered prior to the commencement of this Act.

Register of Members.

119. (1) Every company shall keep at its registered office in one or more books a register of its members, and enter therein the following particulars:—

(a) The names and addresses and the occupations (if any) of the members of the company, and in the case of a company having a share capital a statement—

(i.) of the shares held by each member (distinguishing each share by its number); and

(ii.) where the share capital comprises shares of different classes or kinds or having special rights or subject to special restrictions or disabilities of the classes or kinds of shares and the respective number thereof held by each member; and

(iii.) of the amount paid or agreed to be considered as paid on the shares of each member:

Provided that in the case of a no-liability company the provisions of this sub-paragraph shall be deemed to have been complied with if there is entered in the register a statement of the amount paid
up, or deemed to have been paid up, on the shares of each member at the date of allotment of such shares, and there is entered on the first sheet of the register a summary of all calls made by the company showing the shares in respect of which each call was made, the number of each call and the respective dates when each call was made and was payable:

(b) The date at which each person was entered in the register as a member:

(c) The date at which any person ceased to be a member:

Provided that where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the register shall show the amount of stock held by each member instead of the amount of shares, and the particulars relating to shares specified in paragraph (a) of this subsection.

(2) A specimen copy of every type of share certificate issued by the company after the commencement of this Act, shall be affixed in the register before any certificate of that type is issued or delivered out by the company.

(3) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.

120. (1) Every company having more than fifty members shall, unless the register of members is in such a form as to constitute in itself an index keep an index of the names of the members and shall, within fourteen days after the date on which any alteration is made in the register of the members, make any necessary alteration in the index.

(2) The index (which may be in the form of a card index) shall, in respect of each member, contain a sufficient indication to enable the account of that member in the register to be readily found.

(3) If a company fails to comply with this section, the company and every officer who is in default shall be liable to a default fine.

121. (1) On the issue of a share warrant the company shall strike out of its register of members the name of the member then entered therein as holding the shares specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars, namely:

i. The fact of the issue of the warrant;

ii. A statement of the shares included in the warrant, distinguishing each share by its number; and

iii. The date of the issue of the warrant.

(2) The bearer of a share warrant shall, subject to the articles of the company, be entitled on surrendering it for cancellation to have his name entered as a member in the register of members.

(3) The company shall be responsible for any loss incurred by any person by reason of the company entering in its register the name of a bearer of a share warrant in respect of the shares therein specified without the warrant being surrendered and cancelled.
(4) Until the warrant is surrendered the particulars specified in subsection (1) of this section shall be deemed to be the particulars required by this Act to be entered in the register of members, and on the surrender the date of the surrender must be entered.

(5) The bearer of a share warrant may, if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Act, either to the full extent or for any purposes defined in the articles.

122. (1) The register of members commencing from the date of the registration of the company, and the index of the names of the members shall be kept at the registered office of the company, and, except when closed under the provisions of this Act, shall (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than three hours in each day be allowed for inspection) be open for at least three hours, between the hours of eight o'clock in the morning and ten o'clock in the evening, each day for at least three days each week, to the inspection of any member gratis, and to the inspection of any other person on payment of One Shilling or such less sum as the directors may fix for each inspection:

Provided that, where a company has restricted the hours during which the register of members is open for inspection for any period less than the hours when the registered office of the company is open to the public, such restriction shall have no effect until notice thereof has been filed with the Registrar.

(2) Any member or other person may require a copy of the register or of any part thereof, or of the annual return required by this Act or any part thereof, on payment of Six Pence or such less sum as the directors may fix for every hundred words or fractional part thereof required to be copied. The company shall cause any copy so required by any person to be despatched to that person within a period of ten days commencing on the day next after the day on which the requirement is received by the company.

(3) If any inspection required under this section is refused or if any copy required under this section is not despatched within the proper period, the company, and every officer of the company, who is in default shall be liable in respect of each offence to a fine not exceeding Two Pounds, and further to a default fine.

(4) In the case of any such refusal or default the Court may by order compel an immediate inspection of the register and index, or direct that the copies required shall be sent to the persons requiring them, and make any further order which to the Court seems proper.

123. A company may, on giving not less than seven clear days' notice by advertisement in some newspaper published in Adelaide or in the locality in which the registered office of the company is situate, close the register of members for any time or times not exceeding in the whole thirty days in each year.
PART IV.

Power of Court to rectify register.

Imp., s. 100.
Vic., s. 39.
Tas., ss. 40, 41.
S.A., s. 35.

Entry of trusts and trustees.

Imp., s. 101.
Vic., s. 34.
Tas., ss. 24, 35.
S.A., s. 31.

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124. (1) If—

i. the name of any person is without sufficient cause entered in or omitted from the register of members of a company; or

ii. default is made or unnecessary delay takes places in entering on the register the fact of any person having ceased to be a member,

the person aggrieved or any member of the company or the company may apply to the Court for rectification of the register.

(2) The Court may either refuse the application or may order rectification of the register and payment by the company or any other party to the proceedings of any damages sustained by any party aggrieved.

(3) On any application under this section the Court may decide any question relating to the title of any person who is a party to the proceeding to have his name entered in or omitted from the register, whether the question arises between members or alleged members or between members or alleged members on the one hand and the company on the other hand: and generally may decide any question necessary or expedient to be decided for rectification of the register.

(4) In the case of a company required by this Act to file an annual return with the Registrar, the Court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be filed with the Registrar.

125. (1) Save as hereinafter mentioned in this section, and in section 386 of this Act, no notice of any trust, expressed, implied, or constructive, shall be entered on the register, or be receivable by the Registrar.

(2) Any trustee, executor, or administrator of the estate of any deceased person who was registered as the holder of a share in any company may become registered as the holder of that share as such trustee, executor, or administrator; and the trustee, executor, or administrator shall in respect of that share be subject to the same liabilities, and no more, as he would have been subject to if the share had remained registered in the name of the deceased person.

(3) Any trustee, executor, or administrator of the estate of any deceased person who was equitably entitled to a share in any company may, with the consent of the company and of the registered holder of the share, become registered as the holder of the share as such trustee, executor, or administrator; and such trustee, executor, or administrator shall in respect of that share be subject to the same liabilities, and no more, as he would have been subject to if the share had been registered in the name of the deceased person.

(4) Notwithstanding the registration of any person as the holder of any share as trustee, executor, or administrator of any deceased person pursuant to subsections (2) or (3) of this section, the company may treat such person as being absolutely entitled to the share...
registered in his name and shall be under no obligation or duty towards any other person.

126. The register of members shall be prima facie evidence of any matters by this Act directed or authorised to be inserted therein.

**Branch Register.**

127. (1) A company may, if so authorised by its articles, cause to be kept in any country, State, or colony, a branch register of members (in this Act called a branch register).

(2) The company shall file with the Registrar 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 given within fourteen days of the opening of the office or of the change or discontinuance, as the case may be.

(3) If default is made in complying with subsection (2) of this section, the company and every officer of the company who is in default shall be liable to a default fine.

128. (1) A branch register shall be deemed to be part of the company's register of members (in this section called "the principal register").

(2) It shall be kept and may be closed in the same manner in which the principal register is by this Act required to be kept, or permitted to be closed, except that the advertisement before closing the register shall be inserted in some newspaper circulating in the district wherein the branch register is kept.

(3) The company shall transmit to its registered office a copy of every entry in its branch register as soon as may be after the entry is made, and shall cause to be kept at its registered office duly entered up from time to time a duplicate of its branch register. Every such duplicate shall for all the purposes of this Act be deemed to be part of the principal register.

(4) Subject to the provisions of this section with respect to the duplicate register the shares registered in a branch register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a branch register shall during the continuance of that registration be registered in any other register.

(5) The company may discontinue to keep any branch register, and thereupon all entries in that register shall be transferred to some other branch register kept by the company in the same country, State, or colony, or to the principal register.

(6) Subject to the provisions of this Act, any company may by its articles make such provisions as it may think fit respecting the keeping of branch registers.

(7) If default is made in complying with subsection (3) of this section, the company and every officer of the company who is in default shall be liable to a default fine.
129. (1) Every company having a share capital shall within twenty-one days after the thirtieth day of September in each year file with the Registrar a return containing the following information:

1. the names, addresses, and occupations of all persons who on the thirtieth day of September preceding the return were members of the company and of all persons who have ceased to be members since the date of the last return, or in the case of a first return, since the incorporation of the company;

2. the number of shares held by each of the members at the date of the return specifying the types or kinds of shares;

3. if the names of the members are not furnished in alphabetical order an index sufficient to enable the name of any person to be readily found;

4. the address of the registered office of the company;

5. a summary distinguishing between the shares issued for cash and shares issued as fully or partly paid up otherwise than in cash;

6. the amount of the share capital of the company, the number of shares into which it is divided, and, where the shares are divided into different classes or kinds having special rights or subject to special restrictions or disabilities, the classes or kinds of shares;

7. the number of shares taken from the commencement of the company up to the date of the return;

8. the amount called up on each share;

9. the total amount of calls received, inclusive of application and allotment moneys;

10. the total amount of calls unpaid;

11. the total amount of the sums, if any, paid by way of commission in respect of any shares or debentures;

12. particulars of the discount allowed on the issue of any shares issued at a discount, or of so much of that discount as has not been written off at the date when the return is made;

13. the total amount of the sums, if any, allowed by way of discount in respect of any debentures since the date of the last return;
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xiv. the total number of shares forfeited;

xv. the total amount of shares for which share warrants are outstanding at the date of the return;

xvi. the total amount of share warrants issued and surrendered respectively since the date of the last return or incorporation as the case may be;

xvii. the number of shares comprised in each share warrant;

xviii. all the particulars with respect to the persons who at the date of the return are directors of the company which are by this Act required to be contained in the register of the directors of the company;

xix. the total amount of the indebtedness of the company in respect of mortgages and charges which, or a list of which, are required to be registered or filed with the Registrar under this Act;

xx. the name of every auditor of the company for the time being;

xxi. the date of holding the last annual meeting;

xxii. where a company has issued debentures particulars of which are not included under paragraph xix. of this subsection, a list of the names, addresses, and occupations of all persons who on the date on which the return is made were the holders of such debentures, particulars of the number and value of debentures redeemed since the date of the last return, and similar particulars in relation thereto as must by paragraphs v., vi., vii., viii., ix., x., and xiv. of this subsection, be included with regard to shares, or, where debentures are to bearer, similar particulars in relation thereto as must by paragraphs xv., xvi., and xvii. of this subsection be included with reference to share warrants to bearer;

xxiii. except where the company is a private company or a proprietary company, a copy of the last balance-sheet shall accompany and form part of the return. The copy shall be certified by a director or the manager of the company to be a true copy, and shall be accompanied by a copy of the report of the auditors thereon certified in the same way as the balance-sheet, and if the balance-sheet is in a foreign language there shall be annexed to it a translation thereof in English certified in the prescribed manner to be a correct translation:

Provided that if the said last balance-sheet did not comply with the requirements of the law in force at the date of the audit with respect to form of balance-sheet, the copy shall be corrected and added to so as to make it comply with the said requirements, and the fact that the copy has been so amended shall be stated thereon.

(2) The return shall be contained in a separate book or folder and shall be signed by a director or manager.

(3) A proprietary company shall send with the annual return required by this section a certificate signed by a director or the manager of the company that the company has not, since the date...
of the last return, or, in the case of a first return, since the date of the incorporation of the company, or issue of a certificate that the company is a proprietary company, as the case may be, issued any invitation to the public to subscribe for any shares, debentures, stock or bonds of the company, and, where the annual return discloses the fact that the number of members of the company exceeds fifty, also a certificate so signed that the excess consists wholly of persons who under paragraph (b) of subsection (1) of section 37 of this Act, are not to be included in reckoning the number of fifty.

(4) A private company shall send with the annual return required by this section a certificate signed by a director or manager of the company that the company has not, since the date of the last return, or, in the case of a first return, since the date of the incorporation of the company, or issue of a certificate that the company is a private company, as the case may be, issued any invitation to the public to subscribe for any shares, debentures, stock or bonds of the company.

(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 and liable on conviction to a default fine of Five Pounds. This section shall not apply to a no-liability company.

(6) The Registrar may on the application of any company fix some day other than the thirtieth of September as the day from which the time within which that company must lodge a return under this section is to be computed; and when a day has been so fixed, this section shall be construed as regards the particular company as though the day so fixed were substituted for the thirtieth of September wherever that day is mentioned in this section.

130. (1) Every company not having a share capital shall, within twenty-one days after the thirtieth day of September in each year, file with the Registrar a return containing the following information:

1. the names, addresses, and occupations of all persons who, on the thirtieth day of September preceding the return, were members of the company and of all persons who have ceased to be members since the date of the last return, or in the case of a first return, since the incorporation of the company; Provided that where a company has compiled such a list of members as at a date within three months prior to the thirtieth day of September in that year the company may, with the consent of the Registrar, in lieu of a list made up to the thirtieth day of September, file that list, with the addition thereto of particulars of all persons who have become members of the company between the date of that list and the thirtieth day of September next following, and in such case the list to be filed by the company for the following year shall commence from the date of the list so filed;

2. the dates when such persons who have ceased to be members since the date of the last return or incorporation as the case may be, ceased to be members;
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III. if the names of the members are not furnished in alphabetical order an index sufficient to enable the name of any person to be readily found;

IV. the address of the registered office of the company;

V. all the particulars with respect to the persons who at the date of the return are directors of the company which are by this Act required to be contained in the register of the directors of the company;

VI. the total amount of the indebtedness of the company in respect of mortgages and charges which or a list of which are required to be registered or filed with the Registrar under this Act;

VII. the name of every auditor of the company for the time being;

VIII. the date of holding the last annual meeting;

IX. if the company has issued debentures which are not included in the particulars supplied under paragraph VI., the return shall include such particulars of debentures as a company having a share capital must include in a return pursuant to section 129;

X. a copy of the last balance-sheet must accompany and form part of the return. The copy shall be certified by a director or manager of the company to be a true copy, and shall be accompanied by a copy of the report of the auditors thereon, certified in the same way as the balance-sheet, and if the balance-sheet is in a foreign language there shall be annexed to it a translation in English certified in the prescribed manner to be a correct translation: Provided that if the said last balance-sheet did not comply with the requirements of the law in force at the date of the audit with respect to form of balance-sheet the copy shall be corrected and added to so as to comply with the said requirements, and the fact that the copy has been so amended shall be stated thereon.

(2) The return shall be contained in a separate book or folder and shall be signed by a director or manager.

(3) If a company not having a share capital fails to comply with this section the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a default fine of Five Pounds.

Meetings and Proceedings.

131. (1) A general meeting of every company shall be held once at the least in every calendar year, and not more than fifteen months after the holding of the last preceding general meeting.

(2) If default is made in holding a meeting of the company in accordance with the provisions of this section the company and every officer who is in default shall be liable to a fine not exceeding Twenty Pounds.
First statutory meeting of company.

(3) If default is made as aforesaid the Court may, on the application of any member of the company, call or direct the calling of a general meeting of the company.

132. (1) Every company limited by shares, or limited by guarantee and having a share capital, and registered after the commencement of this Act shall, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, or in case of a company to which section 118 of this Act does not apply, from the date of incorporation of the company, hold a general meeting of the members of the company, which shall be called the statutory meeting.

(2) The directors shall, at least seven days before the day on which the meeting is held, forward a report (in this Act called "the statutory report") to every member of the company and to every other person entitled under this Act to receive it.

(3) The statutory report shall be certified by not less than two directors of the company, or where there are less than two directors by the sole director or manager, and shall state—

(a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;

(b) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid;

(c) an abstract of the receipts of the company and of the payments made thereout up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company;

(d) the names, addresses, and descriptions of the directors, auditors (if any), managers, (if any), and secretary of the company; and

(e) the particulars of any contract the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

(4) The statutory report shall, so far as it relates to the shares allotted by the company and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors (if any) of the company.

(5) The directors shall cause a copy of the statutory report, certified as by this section required, to be filed with the Registrar forthwith after the sending thereof to the members of the company.

(6) The directors shall cause a list showing the names, descriptions, and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commences-
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ment of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

(7) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(8) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles either before or subsequently to the former meeting may be passed; and the adjourned meeting shall have the same powers as an original meeting.

(9) The provisions of this section as to the forwarding and filing of the statutory report shall not apply in the case of a private company or a proprietary company, but such statutory report shall be included in the minute-book of the company required to be kept pursuant to the provisions of this Act.

(10) In the event of any default in complying with the provisions of this section the company and every officer of the company who is in default shall be liable to a fine not exceeding Twenty Pounds.
(6) For the purposes of this section, the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice thereof as is required by section 136 of this Act.

134. (1) The following provisions shall have effect insofar as the articles of the company do not make other provisions in that behalf:—

(a) a meeting of a company, other than a meeting for the passing of a special resolution may be called by seven days’ notice in writing:

(b) notice of the meeting of a company shall be served on every member of the company and the auditor for the time being in the manner in which notices are required to be served by Table A or, in the case of a no-liability company, Table B in the First Schedule to this Act, and for the purpose of this provision, a reference to either table means that table as for the time being in force:

(c) two or more members holding not less than one-tenth of the issued share capital or, if the company has not a share capital, not less than five per cent. in number of the members of the company may call a meeting:

(d) in the case of a private company, or proprietary company, two members and in the case of any other company three members personally present shall be a quorum:

(e) any member elected by the members present at a meeting may be chairman thereof:

(f) in the case of a company originally having a share capital, every member shall have one vote in respect of each share or each Ten Pounds of stock held by him, and in any other case every member shall have one vote.

(2) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called or to conduct the meeting of the company in manner prescribed by the articles or this Act, the Court, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting may order a meeting of the company to be called, held, and conducted in such manner as the Court thinks fit, and where any such order is made may give such ancillary or consequential directions as it thinks expedient. Any meeting called, held, and conducted in accordance with any such order shall for all purposes be deemed to be a meeting of the company duly called, held, and conducted.

(3) The auditor for the time being of a public company may attend, and as such auditor, take part in all the business transacted at the meeting, but may not, as such auditor, vote.

135. (1) A corporation, whether a company within the meaning of this Act or not, may—

(a) if it is a member of a company by resolution of its directors or other governing body authorise such person
as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company:

(b) if it is a creditor (including a holder of debentures) of a company, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(2) A person authorised as aforesaid shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual shareholder, creditor, or holder of debentures, of that other company.

136. (1) A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members as, being entitled so to do, vote in person or, where proxies are allowed, by proxy, at a general meeting, of which notice, specifying the intention to propose the resolution as an extraordinary resolution, has been duly given.

(2) A resolution shall be a special resolution when it has been passed by such a majority as is required for the passing of an extraordinary resolution and at a general meeting of which not less than fourteen days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given: Provided that, if all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than fourteen days' notice has been given.

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

(4) At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed a poll shall be taken to be effectively demanded, if demanded—

(a) by such number of members for the time being entitled under the articles to vote at the meeting as may be specified in the articles, so, however, that it shall not in any case be necessary for more than five members to make the demand; or

(b) if no provision is made by the articles with respect to the right to demand the poll—

(i.) by any three members so entitled; or

(ii.) by one member or two members so entitled if that member holds or those two members together hold not less than fifteen per cent, of the paid-up share capital of the company.
PART IV.

Registration and copies of special and extraordinary resolutions.
Imp., s. 118.
Vic., s. 77.
Tas., s. 77.
S.A., s. 51.

(5) When a poll is demanded in accordance with this section in computing the majority on the poll reference shall be had to the number of votes to which each member is entitled by this Act or the articles of the company.

(6) For the purposes of this section notice of a meeting shall be deemed to be duly given, and the meeting to be duly held, when the notice is given and the meeting held in manner provided by this Act or the articles.

137. (1) A copy of every resolution or agreement to which this section applies certified by the chairman of the meeting to be a true copy thereof shall, within fifteen days after the passing or making thereof, be filed with the Registrar, who shall record the same.

(2) Where articles have been registered a copy of every such resolution or agreement for the time being in force shall be embodied in or annexed to every copy of the articles issued after the passing of the resolution or the making of the agreement.

(3) Where articles have not been registered a copy of every such resolution or agreement shall be forwarded to any member at his request gratis or to any other person, on payment of One Shilling or such less sum as the directors fix.

(4) This section shall apply to—

(a) special resolutions:
(b) extraordinary resolutions:
(c) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless (as the case may be) they had been passed as special resolutions or as extraordinary resolutions:
(d) resolutions or agreements which have been agreed to by all the members of some class of shareholders, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members:
(e) resolutions for voluntary winding-up within the meaning of this Act.

(5) If a company fails to comply with subsection (1) of this section, the company and every officer of the company who is in default shall be liable to a default fine of Two Pounds.

(6) If a company fails to comply with subsection (2) or subsection (3) of this section, the company and every officer of the company who is in default shall be liable to a fine not exceeding One Pound for each copy in respect of which default is made.

(7) For the purposes of the last two foregoing subsections a liquidator of the company shall be deemed to be an officer of the company.
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138. Where after the commencement of this Act a resolution is passed at an adjourned meeting of—

(a) a company:
(b) the holders of any class of shares in a company:
(c) the directors of a company:
(d) any creditors or contributories of a company,

the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

139. (1) Every company shall cause minutes of all proceedings of general meetings and where there are directors or managers of all proceedings at meetings of its directors or managers to be forthwith entered in books kept for that purpose.

(2) Any such minute, if purporting to be signed as correct by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Until the contrary is proved every general meeting of the company, or meeting of directors or managers in respect of the proceedings whereof minutes have been so made, shall be deemed to have been duly held and convened and all proceedings had thereat to have been duly had, and all appointments of directors, managers, or liquidators shall be deemed to be valid.

140. (1) The books containing the minutes of proceedings of any general meeting of a company shall be kept at the registered office of the company, and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than three hours in each day be allowed for inspection) be open to the inspection of any member without charge: Provided that where a company has restricted the hours during which the minute books are open for inspection for any period less than the hours when the registered office of the company is open to the public, such restriction shall have no effect until notice thereof has been filed with the Registrar.

(2) Any member shall be entitled to be furnished within seven days after he has made a request in that behalf to the company with a copy of any such minutes as aforesaid at a charge not exceeding Six Pence for every hundred words.

(3) If any inspection required by this section is refused or if any copy required under this section is not sent within the proper time the company, and every officer of the company, in default shall be liable for each offence to a fine not exceeding Two Pounds, and further to a default fine of Two Pounds.

(4) In the case of any such refusal or default the Court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings or direct that the copies required shall be sent to the persons requiring them.
141. (1) Every company shall cause to be kept proper books of account with respect to—

(a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place:

(b) all sales and purchases of goods by the company:

(c) the assets and liabilities of the company specifying separately all contingent assets and liabilities.

(2) The books of account shall be kept at the registered office of the company or at such other place as the directors think fit, and shall at all times be open to inspection by the directors.

(3) If any director—

(a) fails to take all reasonable steps to secure compliance by the company with the requirements of this section; or

(b) has by his own wilful act been the cause of any default by the company under this section,

he shall, in respect of each offence, be liable to a fine not exceeding One Hundred Pounds.

142. (1) The directors of every company shall at some date not later than fifteen months after the incorporation of the company and subsequently once at least in every calendar year lay before the company in general meeting a profit and loss account or, in the case of a company not trading for profit, an income and expenditure account for the period, in the case of the first account, since the incorporation of the company, and, in any other case, since the preceding account, made up to a date not earlier than the date of the meeting by more than three months, or, in the case of a company carrying on business or having interests outside Australia, by more than six months: Provided that if for any special reason he thinks fit so to do, the Registrar may, in the case of any company, extend the period of fifteen months aforesaid, and in the case of any company and with respect to any year extend the periods of three and six months aforesaid.

(2) The directors shall cause to be made out in every calendar year, and to be laid before the company in general meeting, a balance-sheet as at the date to which the profit and loss account, or the income and expenditure account, as the case may be, is made up, and there shall be attached to every such balance-sheet a report by the directors with respect to the state of the company's affairs, the amount, if any, which they recommend should be paid by way of dividend, and the amount, if any, which they propose to carry to the reserve fund, general reserve, or any reserve account shown specifically on the balance-sheet, or to any reserve fund, general reserve, or reserve account to be shown specifically on a subsequent balance-sheet.

(3) If any person being a director of a company fails to take all reasonable steps to comply with the provisions of this section he shall, in respect of each offence, be liable to a fine not exceeding One Hundred Pounds.
143. (1) Every balance-sheet of a company shall contain a summary of the authorised share capital and of the issued share capital of the company, its liabilities and its assets, together with such particulars as are necessary to disclose the general nature of the liabilities and the assets of the company and to distinguish between the amounts respectively of the fixed assets and of the floating assets, and shall state how the values of the fixed assets have been arrived at.

(2) The balance sheet may in the case of a banking company to which this section applies and shall in the case of any other company be in one of the forms B or C in the Fifth Schedule or to the like effect and comply with the directions (if any) at the foot of the form.

(3) There shall be stated under separate headings in the balance-sheet, so far as they are not written off—

(a) the preliminary expenses of the company; and

(b) any expenses incurred in connection with any issue of share capital or debentures; and

(c) if it is shown as a separate item in or is otherwise ascertainable from the books of the company, or from any contract for the sale or purchase of any property to be acquired by the company, or from any documents in the possession of the company relating to the stamp duty payable in respect of any such contract or the conveyance of any such property, the amount of the goodwill and of any patents and trade-marks as so shown or ascertained.

(4) Where any liability of the company is secured otherwise than by operation of law on any assets of the company, the balance-sheet shall include a statement that that liability is so secured, but it shall not be necessary to specify in the balance-sheet the assets on which the liability is secured.

(5) The provisions of this section are in addition to other provisions of this Act requiring other matters to be stated in balance-sheets.

144. Where any of the assets of a company consist of shares in, or amounts owing (whether on account of any loan or otherwise) from a subsidiary company or subsidiary companies, the aggregate amount of those assets, distinguishing shares and indebtedness, shall be set out in the balance-sheet of the first-mentioned company separately from all its other assets, and where a company is indebted (whether on account of any loan or otherwise) to a subsidiary company or subsidiary companies, the aggregate amount of that indebtedness shall be set out in the balance-sheet of that company separately from all its other liabilities.

145. (1) Where a company (in this subsection referred to as “the holding company”) holds shares either directly or through a nominee in a subsidiary company or in two or more subsidiary companies, there shall be annexed to the balance-sheet of the holding company.
company a statement, signed by the persons by whom in pursuance of section 149 of this Act the balance-sheet is signed, stating how the profits and losses of the subsidiary company, or, where there are two or more subsidiary companies, the aggregate profits and losses of those companies, have (so far as they concern the holding company) been dealt with in, or for the purposes of, the accounts of the holding company, and in particular how, and to what extent—

(i) provision has been made for the losses of any subsidiary company either in the accounts of that company or of the holding company, or of both; and

(ii) losses of any subsidiary company have been taken into account by the directors of the holding company in arriving at the profits and losses of that company as disclosed in its accounts: Provided that it shall not be necessary to specify in any such statement the actual amount of the profits or losses of any subsidiary company, or the actual amount of any part of any such profits or losses which has been dealt with in any particular manner.

(2) If in the case of a subsidiary company the auditor’s report on the balance-sheet of the company does not state without qualification that the auditors have obtained all the information and explanations they have required and that the balance-sheet is properly drawn up so as to exhibit a true and correct view of the state of the company’s affairs according to the best of their information and the explanations given to them and as shown by the books of the company, the statement which is to be annexed as aforesaid to the balance-sheet of the holding company shall contain particulars of the manner in which the report is qualified.

(3) For the purposes of this section, the profits or losses of a subsidiary company mean the profits or losses shown in any accounts of the subsidiary company made up to a date within the period to which the accounts of the holding company relate, or, if there are no such accounts of the subsidiary company available at the time when the accounts of the holding company are made up, the profits or losses shown in the last previous accounts of the subsidiary company which became available within that period.

(4) If for any reason the directors of the holding company are unable to obtain such information as is necessary for the preparation of the statement aforesaid, the directors who sign the balance-sheet shall so report in writing and their report shall be annexed to the balance-sheet in lieu of the statement.

146. (1) Where the assets of a company consist in whole or in part of shares in another company whether held directly or through a nominee and whether that other company is a company within the meaning of this Act or not, and—

(a) the amount of the shares so held is at the time when the accounts of the holding company are made up more than fifty per cent. of the issued share capital of that other
company or such as to entitle the company to more than fifty per cent. of the voting power in that other company; or

(b) the company has power (not being power vested in it by virtue only of the provisions of a debenture trust deed or by virtue of shares issued to it for the purpose in pursuance of such provisions) directly or indirectly to appoint the majority of the directors or persons occupying the position of director, by whatever name called in that other company,

that other company shall be deemed to be a "subsidiary company" for the purposes of this Act.

(2) Where a company, the ordinary business of which includes the lending of money, holds shares in another company as security only, no account shall for the purpose of determining under this subsection whether that other company is a subsidiary company be taken of the shares so held.

147. (1) The accounts which in pursuance of this Act are to be laid before every company in general meeting shall contain particulars showing—

(a) the amount of any loans which during the period to which the accounts relate have been made either by the company or by any other person under a guarantee from or on a security provided by the company to any director or officer or employee of the company, including any such loans which were repaid during the said period;

(b) the amount of any loans made in manner aforesaid to any director or officer or employee at any time before the period aforesaid and outstanding at the expiration thereof;

(c) the total of the amount paid to the directors as remuneration for their services, inclusive of all fees, percentages, or other emoluments, paid to or receivable by them by or from the company or by or from any subsidiary company; and

(d) the amount of any debts owing to the company or to any subsidiary company by any director of the company which debts are outstanding at the end of the period to which the accounts relate and which have been due and payable for at least twelve months.

(2) The provisions of subsection (1) shall not apply—

(i.) in the case of a company the ordinary business of which includes the lending of money to a loan made by the company in the ordinary course of its business; or

(ii.) to a loan made by the company to any officer or employee of the company if the loan does not exceed fifteen hundred pounds and is certified by the directors of the company to have been made in accordance with any practice adopted or about to be adopted by the company with respect to loans to its employees.
(3) If in the case of any such accounts as aforesaid the requirements of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report on the balance-sheet of the company, so far as they are reasonably able to do so, a statement giving the required particulars.

(4) In this section "emoluments" includes fees, percentages, and other payments made or consideration given directly or indirectly to a director as such and the money value of any allowances or perquisites belonging to his office.

148. (1) No balance-sheet, summary, advertisement, statement of assets and liabilities, or other document whatsoever published, issued, or circulated by or on behalf of a company shall contain any direct or indirect representation that the company has any reserve fund, unless—

(a) that reserve fund is actually existing; and

(b) the said representation is accompanied by a statement showing whether or not such reserve fund is used in the business, and, if any portion thereof is otherwise invested, showing the manner in which, and the securities upon which, the same is invested.

(2) Any director or manager who, alone or in conjunction with any other person, knowingly or wilfully, signs, publishes, issues, or circulates, or causes to be signed, published, issued, or circulated, any balance-sheet, summary, advertisement, statement of assets and liabilities, or other document which contravenes subsection (1) of this section, shall be guilty of a misdemeanour, punishable on indictment in the Supreme Court, and in addition to any civil responsibility shall on conviction be liable to be imprisoned for any term not exceeding two years; and any director or manager who through culpable negligence, alone or in conjunction with any other person, signs, publishes, issues, or circulates, or causes to be signed, published, issued, or circulated, any balance-sheet, summary, advertisement, statement of assets and liabilities, or other document which contravenes the said subsection, shall, in addition to any civil responsibility, be guilty of an offence, and shall on conviction be liable to a penalty not exceeding One Hundred Pounds.

149. (1) Every balance-sheet of a company shall first be signed on behalf of the board by two of the directors of the company, or if there is only one director resident in the State, by that director, and the auditors' report shall be attached to the balance-sheet, and the report shall be laid before the company in general meeting, and shall be open to inspection by any member.

(2) If any copy of a balance-sheet which has not been signed as required by this section is issued, circulated, or published, or if any copy of a balance-sheet is issued, circulated, or published,
without either having a copy of the auditors' report attached thereto the company and every director, manager, or other officer of the company who is knowingly a party to the default shall, on conviction, be liable to a penalty not exceeding Twenty Pounds.

(3) The auditors of every company, before making a report pursuant to this section, shall require, and the directors and manager of the company shall without unnecessary delay supply to the auditors, a balance-sheet (in this Act referred to as the private balance-sheet) giving the details on which the shareholders' balance-sheet is founded, and showing amongst other things the amount of deduction (if any) for debts considered to be bad or doubtful.

150. (1) In the case of a company not being a private or proprietary company—

(a) a copy of every balance-sheet including every document required by law to be annexed thereto, which is to be laid before the company in general meeting, together with a copy of the auditors' report, shall not less than seven days before the date of the meeting, be sent to all persons entitled to receive notices of general meetings of the company;

(b) any member of a company whether he is or is not entitled to have sent to him copies of the company's balance-sheets and any holder of debentures of a company, shall be entitled to be furnished on demand without charge with a copy of the last balance-sheet of the company including every document required by law to be annexed thereto, together with a copy of the report of the company's auditors on the balance-sheet.

(2) If the company makes default in complying with paragraph (a), the company and every officer of the company who is in default, shall be liable to a fine not exceeding Twenty Pounds, and a default fine.

(3) If, where any person makes a demand for a document with which he is by virtue of paragraph (b) of subsection (1) of this section entitled to be furnished, the company fails to comply with the demand within seven days after the making thereof, the company, and every officer of the company who is in default, shall be liable to a default fine, unless it is proved that that person has already made a demand for and been furnished with a copy of the document.

151. In the case of a company being a proprietary company, any member, or in the case of a private company, any member or person mentioned in paragraph (b) of subsection (1) of section 38, shall be entitled to be furnished, within seven days after he has made a request in that behalf to the company, with a copy of the balance-sheet, the auditors' report, and every other document required by law to be annexed to the balance-sheet, at a charge not exceeding Sixpence for every hundred words.
If default is made in furnishing such a copy to any member who demands it and tenders to the company the amount of the proper charge therefor, the company and every officer of the company who is in default shall be liable to a default fine.

152. (1) Every company, being an insurance company or a deposit, provident, or benefit society under the Companies Act, 1864, shall, before it commences business, and also on the first Monday in February and the first Monday in August in every year during which it carries on business, make a statement in the form set out in the Seventh Schedule to this Act, or as near thereto as circumstances admit. The aforesaid statement shall be verified by a statutory declaration by the manager or other authorised officer of the company, and filed with the Registrar within fifteen days from the date thereof.

(2) A copy of the statement shall be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on.

(3) Every member and every creditor of the company shall be entitled to a copy of the statement, on payment of a sum not exceeding Six Pence.

(4) If default is made in complying with this section, the company, and every officer of the company who is in default, shall be liable to a default fine.

(5) For the purposes of this Act a company which carries on the business of insurance in common with any other business or businesses shall be deemed to be an insurance company.

Audit.

153. (1) Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.

(2) If an appointment of auditors is not made at an annual general meeting the Companies Auditors' and Liquidators' Board may, on the application of any member of the company, appoint an auditor of the company for the current year, and fix the remuneration to be paid to him by the company for his services.

(3) A person other than a retiring auditor shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a shareholder to the company not less than fourteen days before the annual general meeting; and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to the shareholders, either by advertisement or in any other mode allowed by the articles, not less than seven days before the annual general meeting:
Provided that if after notice of the intention to nominate an auditor has been so given an annual general meeting is called for a date fourteen days or less after the notice has been given, the notice, though not given within the time required by this subsection, shall be deemed to have been properly given for the purposes thereof, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this subsection, be sent or given at the same time as the notice of the annual general meeting.

(4) Subject as hereinafter provided, the first auditors of the company may be appointed by the directors at any time before the first annual general meeting, and auditors so appointed shall hold office until that meeting:

Provided that—

(a) the company may at a general meeting of which notice has been served on the auditors in the same manner as on members of the company, remove any such auditors and appoint in their place any other persons being persons who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than seven days before the date of the meeting; and

(b) if the directors fail to exercise their powers under this subsection, the company in general meeting may appoint the first auditors, and thereupon the said powers of the directors shall cease.

(5) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors, if any, may act.

(6) The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the first annual general meeting, or to fill any casual vacancy, may be fixed by the directors and that the remuneration of an auditor appointed by the Companies Auditors' and Liquidators' Board may be fixed by that Board.

154. (1) None of the following persons shall be qualified for appointment or act as auditor of a company:

(a) a director or officer or employee of the company:

(b) a person who is a partner of or in the employment of an officer or employee of the company:

(c) a body corporate:

(d) a person who is or becomes indebted to the company in an amount exceeding Fifty Pounds.

(2) Any person disqualified by subsection (1) hereof who acts as auditor of a company shall be liable to a fine not exceeding Fifty Pounds.
155. (1) The auditors shall make a report to the members on the accounts examined by them, and on every balance-sheet laid before the company in general meeting during their tenure of office, and the report shall state—

(a) whether or not they have obtained all the information and explanations they have required; and

(b) whether in their opinion the balance-sheet referred to in the report is properly drawn up, and exhibits a true and correct view of the state of the company’s affairs according to the best of their information and the explanations given to them and as shown by the books of the company.

(2) Every auditor of a company shall have a right of access at all times to every minute book of the company, directors or managers, and all other books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors.

(3) The auditors of a company shall be entitled to attend any general meeting of the company at which any accounts which have been examined or reported on by them are to be laid before the company and to make any statement or explanation they desire with respect to the accounts.

(4) A majority of members personally present at any general meeting of the company may request the attendance of the company’s auditor at the meeting for the purpose of making any explanation in respect of his report or the company’s accounts which the members desire, and for that purpose may adjourn the meeting to any time and place.

(5) Every auditor of a company shall use reasonable diligence with the view of ascertaining that the books of the company have been properly kept and record correctly the affairs and transactions of the company, and that the assets and securities of the company do in fact exist and are in proper custody or under proper control.

156. (1) The Court may appoint one or more competent inspectors to investigate the affairs of any company, and to report thereon, in such manner as the Court may direct—

I. in the case of a banking company having a share capital, on the application of members holding not less than one-third of the shares issued:

II. in the case of any other company having a share capital, on the application of members holding not less than one-tenth of the shares issued:

III. in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company’s register of members.

(2) The application shall be supported by such evidence as the Court may require for the purpose of showing that the applicants have good reasons for, and are not actuated by malicious motives.
in, requiring the investigation; and the Court may, before appointing an inspector, require the applicants to give security to an amount not exceeding One Hundred Pounds for payment of the costs of the inquiry.

(3) It shall be the duty of all officers and agents of the company to produce to the inspectors all books and documents in their custody or power.

(4) (a) An inspector may by summons under his hand in the form set out in the Eighth Schedule hereto require any officer or agent of the company to appear before him for examination and such summons may require the production of all books and documents in the custody or power of any officer or agent of the company:

(b) Any officer or agent of the company summoned under this subsection shall be paid or tendered the same amount as such person would have been entitled to had he been summoned as a witness to the Supreme Court:

(c) Any officer or agent of the company who after receiving such summons fails to attend at the time and place mentioned therein shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding Twenty Pounds.

(5) An inspector may examine on oath the officers and agents of the company in relation to its business, and may administer an oath accordingly.

(6) If any officer or agent of the company refuses to produce to the inspectors any book or document which it is his duty under this section so to produce, or refuses to answer any question which is put to him by the inspectors with respect to the affairs of the company the inspectors may certify the refusal under their hand to the Court, and the Court may thereupon inquire into the case, and after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, punish the offender in like manner as if he had been guilty of contempt of the Court.

(7) On the conclusion of the investigation the inspectors shall report their opinion to the Court, and a copy of the report shall be forwarded by the Court to the registered office of the company, and a further copy shall at the request of the applicants for the investigation be delivered to them, or any one or more of them.

(8) Except where the Court is satisfied that it is expedient or desirable to appoint some person other than an authorised auditor, no person other than an authorised auditor shall be appointed an inspector under this section.

(9) The Court shall treat any application under this section as urgent.

157. (1) If from the report it appears to the Court that any person has been guilty of any offence in relation to the company for which he is criminally liable and that the case is one in which the prosecution might be undertaken by the Attorney-General, the Court shall refer the matter to him.
(2) If, where any matter is referred to the Attorney-General under this section, he considers that the case is one in which a prosecution ought to be instituted and, further, that it is desirable in the public interest that the proceedings in the prosecution should be conducted by him, he shall institute proceedings accordingly, and it shall be the duty of all officers and agents of the company (other than the defendant in the proceedings), to give to him all assistance in connection with the prosecution which they are reasonably able to give.

(3) The expenses of and incidental to an investigation under the last preceding section (in this section referred to as "the expenses") shall be defrayed by the company unless the Court thinks proper to order that they shall either be paid by the applicants or in part by the company and in part by the applicants.

(4) In addition to the provisions contained in the last preceding subsection the Court may in any case order that the expenses or any part thereof shall be paid, either direct or by way of refund to the company or the applicants, by any director, manager, or other officer of the company.

(5) If the company or any person fails to pay the whole or any part of the sum which it or he is liable to pay under subsections (3) or (4) of this section the applicants shall make good the deficiency, but with a right to recover same as a debt from the company or person liable therefor.

158. (1) A company may by special resolution appoint inspectors to investigate its affairs.

(2) Inspectors so appointed shall have the same powers and duties as inspectors appointed by the Court, except that instead of reporting to the Court they shall report in such manner and to such persons as the company in general meeting may direct.

(3) If any officer or agent of the company refuses to produce to the inspectors any book or document which it is his duty under this section so to produce, or refuses to answer any question which is put to him by the inspectors with respect to the affairs of the company, he shall be liable to be proceeded against in the same manner as if the inspectors had been inspectors appointed by the Court.

(4) For the purposes of this and the two preceding sections—

(a) the expression "officers" includes former officers; and

(b) the expression "agents" in relation to a company shall be deemed to include the bankers of the company and any persons employed by the company as auditors, whether those persons are or are not officers of the company.

159. (1) A copy of the report of any inspectors appointed under this Act, authenticated by the signatures of such inspectors or by the seal of the company whose affairs they have investigated, shall be admissible in any legal proceedings as evidence of the opinion of the inspectors in relation to any matter contained in the report.
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(2) Within twenty-one days after the receipt by it of a report of any inspector appointed under this Act the company shall cause a copy of the report, authenticated by the seal of the company, to be filed with the Registrar.

(3) If default is made in complying with this section the company and every officer of the company who is in default shall be liable to a default fine.

Directors and Managers.

160. (1) Every company not being a private company or a proprietary company shall have at least two directors: Provided that—

(a) this requirement shall not apply to any company existing at the commencement of this Act until one month after such commencement, nor to any company registered after such commencement until one month after registration; and

(b) where a casual vacancy occurs whereby the number of directors is reduced below two this section shall be complied with if the casual vacancy is filled within one month after it occurred.

(2) If any company fails to comply with this section it shall be liable to a default fine.

(3) Failure to comply with this section shall not invalidate any act of or transaction entered into, by, or on behalf of a company.

161. (1) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in any prospectus issued by or on behalf of the company, or as proposed director of an intended company in any prospectus issued in relation to that intended company, or in any statement in lieu of prospectus filed by or on behalf of a company, unless before the registration of the articles or the publication of the prospectus, or the filing of the statement in lieu of prospectus, as the case may be, he has, by himself or by his agent authorised in writing—

(a) signed and filed with the Registrar a consent in writing to act as such director; and

(b) either—

i. signed the memorandum for a number of shares not less than his qualification, if any; or

ii. taken from the company and paid or agreed to pay for his qualification shares, if any; or

iii. signed and filed with the Registrar an undertaking in writing to take from the company and pay for his qualification shares, if any; or

iv. made and forwarded to the Registrar a statutory declaration to the effect that a number of shares, not less than his qualification, if any, are registered in his name, and are held by him in his own right.

(2) Where a person has signed and filed such an undertaking, he shall, as regards those shares, be in the same position as if he had signed the memorandum for that number of shares.
(3) On the application for registration of the memorandum and articles of a company the applicant shall file with the Registrar a list of the persons who have consented to be directors of the company, and if this list contains the name of any person who has not so consented the applicant shall be liable to a fine not exceeding Twenty Pounds.

(4) This section shall not apply to—
(a) a company not having a share capital;
(b) a private company;
(c) a proprietary company;
(d) a company which was a private company or a proprietary company before becoming a public company;
(e) a prospectus issued by or on behalf of a company after the expiration of one year from the date on which the company was entitled to commence business.

162. (1) Without prejudice to the restrictions imposed by the last foregoing section it shall be the duty of every director who is by the articles of the company required to hold a specified share qualification, and who is not already qualified to obtain his qualification within one month after his appointment, or such shorter time as may be fixed by the articles.

(2) For the purpose of any provision in the articles requiring a director or manager to hold a specified share qualification the bearer of a share warrant shall not be deemed to be the holder of the shares specified in the warrant.

(3) The office of director of a company shall be vacated if the director does not within one month from the date of his appointment, or within such shorter time as may be fixed by the articles of the company, obtain his qualification, or if after the expiration of such period or shorter time he ceases at any time to hold his qualification.

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

(5) If after the expiration of the said period or shorter time any unqualified person acts as a director of the company, he shall be liable to a fine not exceeding Two Pounds for every day between the expiration of the said period or shorter time or the day on which he ceased to be qualified as the case may be and the last day on which it is proved that he acted as a director.

163. (1) If any person being an undischarged bankrupt acts as director of, or directly or indirectly takes part in or is concerned in the management of, any company including an unregistered company and a company incorporated outside South Australia, which is required to be registered under Part XII of this Act, except with the leave of the Court by which he was adjudged bankrupt, he shall be guilty of a misdemeanour:
Provided that a person shall not be guilty of an offence under this section by reason that he, being an undischarged bankrupt, has acted as director of, or taken part or been concerned in the management of, a company, if he was at the passing of this Act acting as director of, or taking part, or being concerned in the management of that company and has continuously so acted, taken part, or been concerned since the passing of this Act and the bankruptcy was prior to the passing of this Act.

(2) The leave of the Court for the purposes of this section shall not be given unless notice of intention to apply therefor has been served on the Official Receiver, and the Official Receiver may, if he is of opinion that it is contrary to the public interest that any such application should be granted, attend on the hearing of and oppose the granting of the application.

(3) In this section the expression “Official Receiver” means the Official Receiver in Bankruptcy.

164. The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

165. (1) Every company shall keep at its registered office a register of its directors or managers containing with respect to each of them the following particulars, that is to say:—

(a) in the case of an individual, his present Christian name and surname, any former Christian name or surname, his usual residential address, his nationality, and, if that nationality is not the nationality of origin, his nationality of origin, and his business occupation, if any, or, if he has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships; and

(b) in the case of a corporation, its corporate name and registered or principal office.

(2) The company shall, within the periods respectively mentioned in this subsection, send to the Registrar a return in the prescribed form containing the particulars specified in the said register and a notification in the prescribed form of any change among its directors or in any of the particulars contained in the register.

The period within which the said return is to be sent shall be a period of fourteen days from the appointment of the first directors of the company, and the period within which the said notification of a change is to be sent shall be fourteen days from the happening thereof.

(3) The register of directors shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than three hours in each day be allowed for inspection) be open to the inspection of any member of the company without charge and of any other person on payment of One Shilling, or such less sum as the directors fix for each inspection.
PART IV.

Statement as to remuneration of directors to be furnished to shareholders.

166. (1) Any member of a company may, on a demand in that behalf in writing to the company, its directors or manager, require to be furnished to him within seven days from the receipt of the demand a statement, certified as correct, or with such qualifications as may be necessary, by the auditors of the company, showing as respects each of the last three preceding years in respect of which the accounts of the company have been made up the aggregate amount received in that year by way of remuneration or other emoluments by persons being directors of the company, whether as such directors or otherwise in connection with the management of the affairs of the company, and there shall, in respect of any such director who is by virtue of the nomination, whether direct or indirect, of the company a director of any other company, be included in the said aggregate amount any remuneration or other emoluments received by him for his own use whether as a director of, or otherwise in connection with the management of the affairs of that other company:

Provided always that—

(a) a demand for a statement under this section shall be of no effect if the company within one month after the date on which the demand is made resolve that the statement shall not be furnished: Provided that no director shall as a shareholder vote, and if he do vote, his vote shall not be counted on any resolution of the company made under this paragraph; and

(b) it shall be sufficient to state the total aggregate of all sums paid to or other emoluments received by all the directors in each year without specifying the amount received by any individual.

(2) In computing for the purpose of this section the amount of any remuneration or emoluments received by any director, the amount actually received by him shall, if the company has paid on his behalf any sum by way of income tax (including super tax) in respect of the remuneration or emoluments, be increased by the amount of the sum so paid.

(3) If any director or manager fails to comply with the requirements of this section, he shall be liable to a default fine not exceeding Twenty Pounds.
(4) In this section the expression "emoluments" includes fees, percentages, and other payments made or consideration given directly or indirectly to a director as such and the money value of any allowances or perquisites belonging to his office.

167. (1) Subject to the provisions of this section, it shall be the duty of any director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company to declare the nature of his interest at a meeting of the directors of the company and cause such declaration to be minuted.

(2) In the case of a proposed contract the declaration required by this section to be made by a director shall be made at the meeting of the directors at which the question of entering into the contract is first taken into consideration, or if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he became so interested, and in a case where the director becomes interested in a contract after it is made, the said declaration shall be made at the first meeting of the directors held after the director becomes so interested: Provided that if the director so interested does not attend such meeting he shall cause the declaration to be made in writing to the manager prior to or during the meeting.

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

(4) Any director who knowingly fails to comply with the provisions of this section shall be liable to a fine not exceeding Fifty Pounds.

(5) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting directors of a company from having any interest in contracts with the company.

168. (1) It is hereby declared that it is not lawful in connection with the transfer of the whole or any part of the undertaking or property of a company for any payment to be made to any director of the company by way of compensation for loss of office or as consideration for or in connection with his retirement from office unless particulars with respect to the proposed payment, including the amount thereof, have been disclosed to the members of the company and the proposal approved by the company.

(2) Where any payment which is hereby declared to be illegal is made to a director of the company the amount received shall be deemed to have been received by him in trust for the company.

(3) Where any payment is to be made as aforesaid to any director of a company in connection with the transfer to any persons, as a result of an offer made to the general body of shareholders, of all or any of the shares in the company, it shall be the duty of that director to take all reasonable steps to secure that particulars with...
respect to the proposed payment, including the amount thereof, shall be included in or sent with any notice of the offer made for their shares which is given to any shareholders.

(4) If any such director fails to take reasonable steps as aforesaid, or if any person who has been properly required by any such director to include the said particulars in or send them with any such notice fails so to do, he shall be liable to a fine not exceeding Twenty-five Pounds, and if the requirements of the last foregoing subsection are not complied with in relation to any such payment, any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any persons who have sold their shares as a result of the offer made.

(5) If in connection with any such transfer as aforesaid the price to be paid to any director of the company whose office is to be abolished or who is to retire from office for any shares in a company held by him in excess of the price which could at the time have been obtained by other holders of the like shares or any valuable consideration is given to any such director, the excess or the money value of the consideration, as the case may be, shall, for the purposes of this section, be deemed to have been a payment made to him by way of compensation for loss of office or as consideration for or in connection with his retirement from office.

(6) Nothing in this section shall be taken to prejudice the operation of any rule of law requiring disclosure to be made with respect to any such payments as are mentioned in this section or with respect to any other like payments made or to be made to the directors of a company.

169. If in the case of any company provision is made by the articles or by any agreement entered into between any person and the company for empowering a director or manager of the company to assign his office as such to another person, any assignment of office made in pursuance of the said provision shall, notwithstanding anything to the contrary contained in the said provision, be of no effect unless and until it is approved by a special resolution of the company.

Avoidance of Provisions in Articles or Contracts Relieving Officers from Liability.

170. Subject as hereinafter provided any provision, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any director, manager or officer of the company, or any person (whether an officer of the company or not) employed by the company as auditor from, or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company shall be void:

Provided that—

(a) in relation to any such provision which is in force at the date of the commencement of this Act, this section shall have effect only on the expiration of a period of six months from that date; and
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(b) nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force; and

c) notwithstanding anything in this section, a company may, in pursuance of any such provision as aforesaid, indemnify any such director, manager, officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under section 377 of this Act in which relief is granted to him by the Court.

Arrangements and Reconstructions.

171. (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the Court may, on the application of the company or of any creditor or member of the company or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the Court directs.

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(3) The Court may alter or vary such compromise or arrangement and may impose such conditions in the carrying out thereof as it shall think just.

(4) An order made under subsection (2) of this section shall have no effect until an office copy of the order has been filed with the Registrar and a copy of every such order shall be annexed to every copy of the memorandum of the company issued after the order has been made, or, in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

(5) If a company makes default in complying with subsection (4) of this section the company, and every officer of the company or liquidator, who is in default shall be liable to a fine not exceeding One Pound for each copy in respect of which default is made.

(6) In this section the expression "company" means a company liable to be wound up under this Act, and the expression "arrangement" includes a reorganisation of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods.
PART IV.

Provisions for facilitating reconstruction and amalgamation of companies.

New.

Imp., s. 154.

172. (1) Where an application is made to the Court under the last foregoing section for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies, or amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as "a transferor company") is to be transferred to another company (in this section referred to as "the transferee company"), the Court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters:

(a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company:

(b) the allotting or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person:

(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company:

(d) the dissolution, without winding up, of any transferor company:

(e) the provision to be made for any persons, who within such time and in such manner as the Court direct, dissent from the compromise or arrangement:

(f) such incidental, consequential, and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(2) Where an order under this section provides for the transfer of property or liabilities, that property shall by virtue of the order be transferred to and vest in, and those liabilities shall by virtue of the order be transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(3) Where an order is made under this section, every company in relation to which the order is made shall cause an office copy thereof to be filed with the Registrar within seven days after the making of the order, and if default is made in complying with this subsection, the company, and every officer of the company who is in default, shall be liable to a default fine.

(4) In this section the expression "property" includes property rights and powers of every description, and the expression "liabilities" includes duties.
(5) Notwithstanding the provisions of subsection (6) of the last preceding section the expression "company" in this section does not include any company other than a company within the meaning of this Act.

173. (1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as "the transferor company") to another company, whether a company within the meaning of this Act or not (in this section referred to as "the transferee company"), has within four months after the making of the offer in that behalf by the transferee company been approved by the holders of not less than nine-tenths in value of the shares affected, the transferee company may, at any time within two months after the expiration of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and where such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the Court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders are to be transferred to the transferee company:

Provided that, where any such scheme or contract has been so approved at any time before the commencement of this Act, the Court may by order, on an application made to it by the transferee company within two months after the commencement of this Act, authorise notice to be given under this section at any time within fourteen days after the making of the order, and this section shall apply accordingly, except that the terms on which the shares of the dissenting shareholder are to be acquired shall be such terms as the Court may by the order direct instead of the terms provided by the scheme or contract.

(2) Where a notice has been given by the transferee company under this section and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice has been given, or, if an application to the Court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares.

(3) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.
Arbitration and conciliation between companies and others.
Vic., s. 128.
Tas., cf., ibid., 129.
S.A., s. 64.

PART IV.

Arbitration

174. (1) A company may, by writing under its common seal, agree to refer and may refer to arbitration, in accordance with the Arbitration Acts, 1891 and 1921, or any amendments, modifications, or re-enactments thereof, any existing or future difference between itself and any other company or person.

(2) The parties to the arbitration may delegate to the person or persons to whom the reference is made power to settle any forms, order anything to be done, or determine any matter capable of being lawfully determined by the parties to the reference themselves, or the directors or other managing body of any company party to the reference.

(3) All the provisions of the Arbitration Acts, 1891 and 1921, shall apply to arbitrations between companies and persons in pursuance of this Act.

(4) A company may submit any difference between itself and any other person for adjudication or conciliation under section 34 of the Local Courts Act, 1926, or under the Conciliation Act, 1929.

PART V.

NO-LIABILITY COMPANIES.

175. This Part shall only apply to No-liability Companies registered under this Act, or under The Companies Act, 1892.

176. (1) Every company shall, within twenty-one days after the thirtieth day of September in each year, file with the Registrar a return containing the following information—

i. The address of the registered office of the company:

ii. A summary of the shares issued distinguishing between the shares issued for cash and the shares issued fully or partly paid up other than for cash:

iii. The amount of the share capital, the number of shares into which it is divided, and where the shares are divided into different classes or kinds, having special rights or subject to special restrictions or disabilities, the classes or kinds of shares:

iv. The number of shares taken up from the commencement of the company until the date of the return:

v. (a) the amount called up on each share and the numbers of each such call:

(b) 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:
(c) the dates since the last return or incorporation when shares forfeited under section 178 of this Act were offered for sale, and the place of offer:

(d) the number of shares sold at each sale of forfeited shares made since the last return or incorporation:

(e) the number of shares unsold at each offer for sale of forfeited shares made since the last return or incorporation:

(f) particulars of all sales or dealings with shares under section 181 of this Act since the date of the last return or incorporation:

vi. The total of the sums (if any) paid by way of commission in respect of any shares or debentures:

vii. Particulars of the discount allowed on the issue of any shares issued at a discount or of so much of that discount as has not been written off at the date when the return is made:

viii. The total amount of the sums (if any) allowed by way of discount in respect of any debentures since the date of the last return:

ix. The total amount of share warrants issued since the date of the last return:

x. The total amount of shares for which share warrants are outstanding at the date of the return:

xi. The number of shares comprised in each share warrant:

xii. All the particulars with respect to the persons who at the date of the return are directors of the company which are by this Act required to be contained on the register of the directors of the company:

xiii. The total amount of the indebtedness of the company in respect of mortgages and charges which, or a list of which, are required to be registered or filed with the Registrar under this Act:

xiv. The name of every auditor of the company for the time being:

xv. Where a company has issued debentures particulars of which are not included under paragraph xiii. of this subsection, a list of the names, addresses, and occupations of all persons who on the date on which the return is made were the holders of such debentures, particulars of the number and value of debentures redeemed since the date of the last return, and similar particulars in relation thereto as must by paragraphs ii., iii., iv., and sub-paragraphs (a), (b), and (c) of paragraph v., be included with regard to shares or, where debentures are to bearer, similar particulars in relation thereto as must by paragraphs ix., x., and xi. be included with reference to share warrants to bearer:
xvi. A copy of the last balance sheet must accompany and form part of the return. The copy shall be certified by a director or manager of the company to be a true copy and shall be accompanied by a copy of the report of the auditors thereon, certified in the same way as the balance sheet, and if the balance sheet is in a foreign language, there shall be annexed to it a translation in English certified in the prescribed manner to be a correct translation, provided that if the said last balance sheet did not comply with the requirements of the law in force at the date of the audit with respect to form of balance sheet, the copy shall be corrected and added to so as to comply with the said requirements, and the fact that the copy has been so amended shall be stated thereon.

(2) The return shall be contained in a separate book or folder, and shall be signed by a director or manager.

(3) If default is made in complying with this section the company and every officer of the company who is in default, shall be guilty of an offence and shall be liable on conviction to a default fine of Five Pounds.

177. (1) All share certificates issued by or delivered out of the office of a company shall bear endorsed thereon in clear printing or writing the following—

(a) The name of the company and the authority under which it is constituted:

(b) The amount of the authorised capital, with full particulars of number and class of shares into which the capital is divided, and in case of shares carrying special rights or privileges a reference thereto:

(c) The address of the registered office of the company at the date of issue or delivery:

(d) A statement showing the amount paid up or deemed to be paid upon the shares comprised in the particular certificate as appears by the records of the company, and where the amount paid up or deemed to have been paid up is in excess of such statement, then an endorsement stating the number and amount of the last call paid up or credited as paid up on the shares at the time of issue or delivery:

(e) A notice stating the day upon which calls are payable.

(2) Where a company has a branch register within the meaning of section 127 of this Act all share certificates entered in the branch register shall also be endorsed with a statement showing that the certificate is entered in the branch register, and the address for the time being of the office where the branch register is kept.

(3) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable for each default to a fine not exceeding Two Pounds.
178. (1) Calls upon shares shall be made payable on the second Wednesday in a month and on that day only.

(2) Ten days' notice of any call shall be given as hereinafter mentioned, specifying the amount of the call, the day when it will be payable, and the place for payment thereof.

(3) In addition to any provision in the articles of the company notice of a call shall be given by advertisement, published in one daily newspaper published in Adelaide, and in case the registered office shall be in any place other than Adelaide in one such newspaper, and in one or more newspapers circulating in the locality wherein the registered office of the company is situated.

(4) The notice of call shall also be published in the next succeeding issue of the Gazette.

(5) When a call has been made as provided in this section, no subsequent call shall be made until fourteen days from the day when the call so made is payable.

(6) Any share in a company upon which a call remains unpaid for fourteen days after the day upon which such call is payable, shall thereupon be absolutely forfeited without any resolution of the directors or other proceeding.

179. (a) Within six months from the date of forfeiture every forfeited share shall be offered for sale by the company by public auction:

(b) Notice of any offer for sale as aforesaid shall, not less than seven nor more than fourteen days before the day appointed for the sale, be advertised in the Gazette, and in one daily newspaper published in Adelaide, and, in case the company shall have a registered office in any place other than Adelaide, then in one such newspaper, and in one newspaper circulating in the locality wherein the registered office of the company is situated:

(c) Where any forfeited share is offered for sale under the provisions of this section no reserve shall be placed thereon exceeding the amount of unpaid calls:

(d) The proceeds of such sale shall be applied in payment of the expenses of the sale, any expenses necessarily incurred in respect of the forfeiture, and in payment of the call due, and the balance (if any) shall be paid to the member whose share shall have been so sold on his delivering up to the company the share certificate representing such forfeited share:

(e) Until the net proceeds of the sale of any forfeited share are claimed by the person owning the share immediately prior to forfeiture such proceeds shall be paid by the company into a separate banking account, and if not claimed within three months after the sale may be deposited in a banking account carrying interest or invested...
Redemption of forfeited shares.
S.A., s. 215.

Forfeited shares which are not sold to become the absolute property of the company.
S.A., s. 216.

Minute to be conclusive evidence.
S.A., s. 217.

Power to issue new scrip.
S.A., s. 218.

Shareholder not liable to calls or contributions.
S.A., s. 219.

180. Notwithstanding anything in this Part contained the owner at law or in equity of a forfeited share shall be entitled, at any time before the day fixed for offering the share for sale to redeem the share by payment to the secretary of all calls due thereon, and he shall thereupon be entitled to the share as if the forfeiture had not been incurred.

181. If upon the offer for sale of any forfeited share, as provided in section 179, there shall be no bid for the purchase of such share, or no bid sufficient to cover the call or calls then unpaid upon such share, such share shall become the absolute property of the company, and may be sold at such price, or dealt with in such manner as the directors may think advisable for the benefit of the company: Provided that any such sale or dealing shall not for the purposes of any provision of this Act be deemed an issue of shares in the capital of the company.

182. A minute in the books of a company signed by the chairman of directors for the time being or the acting chairman of directors that any shares were offered for sale by public auction, and that there was no sufficient bid to pay the arrears of calls then due thereon, shall be conclusive evidence that such shares became the absolute property of the company on the day when they were offered for sale, and that the previous owners of such shares have forfeited all claim to or in respect of the same.

183. Whenever any forfeited shares shall have been sold at public auction, or shall have become the property of the company, the directors may issue new share certificates in respect of such shares, which shall bear upon the face thereof the words "Issued in lieu of forfeited share-scrip."

184. The acceptance of a share in a company, whether by original allotment or by transfer, shall not be deemed a contract on the part of the person accepting the same to pay any calls in liquidation or otherwise in respect thereof, or any contribution to the debts and liabilities of such company, and such person shall not be liable
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Part V.

185. (1) Every person to whom wages are owing by a company shall be entitled to recover such wages in respect of a period not exceeding four weeks from the directors for the time being of the company who shall be personally jointly and severally liable therefor.

(2) Any director who has paid any wages under subsection (1) of this section shall be entitled to recover the amount paid by him from the company.

(3) Where a director has paid any sum for wages under subsection (1) of this section he shall be entitled to recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment.

Part VI.

WINDING-UP.

I.—Preliminary.

186. (1) The winding-up of a company may be either—
(a) by the Court; or
(b) voluntarily; or
(c) subject to the supervision of the Court.

(2) The provisions of this Act with respect to winding-up apply, unless the contrary appears, to the winding-up of a company in any of those modes.

Contributories.

187. (1) In the event of a company being wound up every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities, and the costs, charges, and expenses of the winding-up, and for the adjustment of the rights of the contributories among themselves, subject to the provisions of subsection (2) of this section and the qualifications following; that is to say:

(a) A past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding-up;

(b) A past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;

(c) A past member shall not be liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act.
PART VI.

(d) In the case of a company limited by shares no contribution shall be required from any member exceeding the amount (if any) unpaid on the shares in respect of which he is liable as a present or past member:

(e) In the case of a company limited by guarantee no contribution shall, subject to the provisions of subsection (3) of this section, be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up:

(f) Nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted or whereby the funds of the company are alone made liable in respect of the policy or contract:

(g) A sum due to any member of a company in his character of a member by way of dividends, profits, or otherwise, shall not be deemed to be a debt of the company payable to that member in a case of competition between himself and any other creditor not a member of the company; but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(2) In the winding-up of a limited company any director or manager, whether past or present, whose liability is under the provisions of this Act unlimited shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of the winding-up a member of an unlimited company: Provided that—

(a) a past director or manager shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding-up:

(b) a past director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office:

(c) subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the Court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company and the costs, charges, and expenses of the winding-up.

(3) In the winding-up of a company limited by guarantee which has a share capital every member of the company 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.
(4) Nothing contained in this Part of this Act shall have the
effect of rendering a member of a no-liability company liable for
the payment of any calls.

188. The term "contributory" means every person liable to
contribute to the assets of a company in the event of its being wound
up, and for the purposes of all proceedings for determining and
all proceedings prior to the final determination of the persons who
are to be deemed contributories includes any person alleged to be a
contributory.

189. The liability of a contributory shall create a debt of the
nature of a specialty accruing due from him at the time when his
liability commenced, but payable at the times when calls are made
for enforcing the liability.

190. (1) If a contributory dies either before or after he has been
placed on the list of contributories his representative shall
be liable in a due course of administration to contribute to the
assets of the company in discharge of his liability, and shall be a
contributory accordingly.

(2) If the representative makes default in paying any money
ordered to be paid by him, proceedings may be taken for adminis­
tering the estate of the deceased contributory, and of compelling
payment thereout of the money due.

191. If a contributory becomes bankrupt, either before or after
he has been placed on the list of contributories—

1. his trustee in bankruptcy shall represent him for all the
purposes of the winding-up, and shall be a contributory
accordingly, and may be called on to admit to proof
against the estate of the bankrupt or otherwise to allow
to be paid out of his assets in due course of law any
money due from the bankrupt in respect of his liability
to contribute to the assets of the company ; and

II. there may be proved against the estate of the bankrupt the
estimated value of his liability to future calls as well as
calls already made.

192. Where a female contributory marries, either before or
after she has been placed on the list of contributories, her separate
property, present and future, shall be liable to contribute to the
assets of the company, and her husband shall also be liable so to
contribute to the extent of all property whatsoever belonging to his
wife which he shall have acquired or become entitled to from or
through his wife, after deducting therefrom any payments made by
him, and any sums for which judgment may have been bona fide
recovered against him in any legal proceeding in respect of any
matters as to which his wife was liable before her marriage; but
he shall not be liable to contribute any further or otherwise. This
section shall be subject to section 19 of the Married Women's
Property Act, 1883-4, as if this section had been included in such Act.
PART VI.

Authorised liquidators to be appointed except in special cases.

New.

193. (1) No person other than a licensed liquidator shall be appointed liquidator of a company whether being wound up by or under the supervision of the Court or voluntarily, except—

(a) in the case of a members' voluntary winding up for the purpose of reconstruction, the company may in general meeting appoint some person other than a licensed liquidator to be the liquidator, and determine what, if any, security shall be given by such liquidator; and

(b) where the Court is satisfied that it is expedient or desirable, the Court may appoint or approve of the appointment of some person other than a licensed liquidator to act as liquidator, either alone or in conjunction with a licensed liquidator, upon giving security in such amount and in such manner as the Court may prescribe.

(2) Any application for approval of the Court to appoint a liquidator other than a licensed liquidator may be made on the application of the company or any member contributory or creditor or representative of any such persons or class, provided that the Court may direct that notice of such application be given to any persons or class and in such manner as it may see fit.

II.—WINDING-UP BY COURT.

Cases in which Company may be Wound up by Court.

194. A company may be wound up by the Court if—

I. the company has by special resolution resolved that the company be wound up by the Court:

II. default is made in filing the statutory report or in holding the statutory meeting:

III. the company does not commence its business within a year from its incorporation or suspends its business for a whole year:

IV. the number of members is reduced in the case of a proprietary company below two, or in the case of any other company below five:

V. the company is unable to pay its debts:

VI. the Court is of opinion that it is just and equitable that the company should be wound up.

195. A company shall be deemed to be unable to pay its debts—

I. If a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding Twenty-five Pounds then due has served on the company, by leaving it at the registered office of the company, a demand
under his hand, requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor; or

II. If execution or other process issued on a judgment decree or order of any Court in favor of a creditor of the company is returned unsatisfied in whole or in part; or

III. If it is proved to the satisfaction of the Court that the company is unable to pay its debts, and in determining whether a company is unable to pay its debts the Court shall take into account the contingent and prospective liabilities of the company.

Petition for Winding-Up and Effect thereof.

196. (1) An application to the Court for the winding-up of a company shall be by petition presented, subject to the provisions of this section, either by the company or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties together or separately:

Provided that—

(a) a contributory shall not be entitled to present a petition for winding-up a company unless either—

I. the number of members is reduced in the case of a proprietary company below two, or in case of any other company below five; or

II. the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him and registered in his name for at least six months during the eighteen months before the commencement of the winding-up, or have devolved on him through the death of a former holder;

(b) a petition for winding-up a company on the ground of default in filing the statutory report, or in holding the statutory meeting, shall not be presented by any person except a member, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held; and

(c) the Court shall not give a hearing to a petition for winding-up a company by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable, and until a prima facie case for winding-up has been established to the satisfaction of the Court.
(2) Where a company is being wound up voluntarily or subject to supervision a petition may be presented by the liquidator as well as by any other person authorised in that behalf under the other provisions of this section, but the Court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding-up or winding-up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.

(3) Where under the provisions of this Part of this Act any person as being the husband of a female contributory is himself a contributory, and a share has during the whole or any part of the six months mentioned in proviso (a) to subsection (1) of this section been held by or registered in the name of the wife, or by or in the name of a trustee for the wife or for the husband, the share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the husband.

197. (1) On hearing the petition the Court may dismiss it with or without costs, or adjourn the hearing conditionally or unconditionally or make any interim order or any other order that it thinks fit, but the Court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets or that the company has no assets.

(2) Where the petition is presented on the ground of default in filing the statutory report or in holding the statutory meeting the Court may—

(a) instead of making a winding-up order direct that the statutory report shall be filed or that a meeting shall be held within a time to be fixed by the Court; and

(b) order the costs to be paid by any persons who in the opinion of the Court are responsible for the default.

198. At any time after the presentation of a petition 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 against the company is pending, apply to the Court or the Court in which the action or proceeding is pending for a stay of proceedings therein, and the Court to which application is so made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit.

199. In a winding-up by the Court 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 shall, unless the Court otherwise orders, be void.

200. Where any company is being wound up by the Court, any attachment, sequestration, distress, or execution put in force against
the estate or effects of the company after the commencement of the winding-up shall be void to all intents.

201. Any petition for winding up a company under this Act shall constitute a *lis pendens* within the meaning of any Act now or hereafter in force relating to the effect of a *lis pendens* upon purchasers or mortgagees.

**Commencement of Winding-up.**

202. (1) Where before the presentation of a petition for the winding-up of a company by the Court 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 of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding-up.

**Consequences of Winding-up Order.**

203. On the making of a winding-up order a copy of the order must forthwith be filed by the company with the Registrar, who shall make a minute thereof in his books relating to the company.

204. When a winding-up order has been made, or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the Court and subject to such terms as the Court may impose.

205. An order for winding-up a company shall operate in favor of all the creditors and of all the members and contributories of the company as if made on the joint petition of a creditor and of a member or of a contributory.

**Liquidators.**

206. (1) For the purpose of conducting the proceedings in winding up a company by the Court, and performing such duties in reference thereto as the Court may impose, the Court may appoint a liquidator or liquidators.

(2) The Court may appoint a liquidator provisionally at any time after the presentation of a winding-up petition.

(3) Where a liquidator is provisionally appointed by the Court, the Court may limit and restrict his powers by the order appointing him.
PART VI.

Meetings of creditors and contributories.
Imp., ss. 185 and 198.
Vic., s. 150.
Cf. Tas., s. 124.
New.

Statement of company's affairs to be submitted to liquidator.
Imp., s. 181.
Vic., s. 152.
Tas., s. 11, 1895.
New.

207. (1) When a winding-up order has been made by the Court, the provisional liquidator, or if no provisional liquidator has been appointed then some person appointed by the Court, shall forthwith summon separate meetings of the creditors and contributories of the company for the purpose of—

i. Determining whether or not the creditors and contributories respectively desire to nominate a liquidator and who shall be the person so nominated; and

ii. Making a determination pursuant to section 220 of this Act.

(2) The Court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of any of the matters aforesaid, the Court shall decide the difference and make such order thereon as the Court may think fit.

208. (1) Where the Court has made a winding-up order or appointed a provisional liquidator there shall, unless the Court thinks fit to order otherwise and so orders, be made out and submitted to the liquidator a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of its assets, debts, and liabilities, the names, residences, and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed, or as the liquidator may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the secretary or other chief officer of the company, or by such of the persons hereinafter in this subsection mentioned, as the liquidator, subject to the direction of the Court, may require to submit and verify the statement, that is to say, persons—

(a) who are or have been directors or officers of the company;

(b) who have taken part in the formation of the company at any time within one year before the relevant date:

(c) who are in the employment of the company, or have been in the employment of the company within the said year, and are, in the opinion of the liquidator, capable of giving the information required:

(d) who are or have been within the said year officers of or in the employment of a company which is, or within the said year was, an officer of the company to which the statement relates.
(3) The statement shall be submitted within fourteen days from the relevant date, or within such extended time as the liquidator or the Court may for special reasons appoint.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the liquidator out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the liquidator may consider reasonable, subject to an appeal to the Court.

(5) If any person without reasonable excuse makes default in complying with the requirements of this section, he shall be liable to a default fine of Five Pounds.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section and to a copy thereof or extract therefrom.

(7) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of Court, and shall on the application of the liquidator be punishable accordingly.

(8) In this section the expression “the relevant date” means in a case where a provisional liquidator is appointed, the date of his appointment, and in a case where no such appointment is made, the date of the winding-up order.

209. (1) Where the Court has made a winding-up order, the liquidator shall, as soon as practicable after receipt of the statement of the company’s affairs, to be submitted under the last preceding section, or, in a case where Court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the Court—

(a) as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities; and

(b) if the company has failed, as to the causes of the failure; and

(c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company or the conduct of the business thereof.

(2) The liquidator may also, if he thinks fit, make a further report or further reports stating the manner in which the company was formed, and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the Court.
(3) If the liquidator states in any such further report as aforesaid that in his opinion a fraud has been committed as aforesaid, the Court shall have the further powers provided in sections 236 and 237 of this Act.

210. (1) A liquidator appointed by the Court may resign or, on cause shown, be removed by the Court.

(2) A vacancy in the office of a liquidator appointed by the Court shall be filled by the Court.

(3) If more than one liquidator is appointed by the Court, the Court shall declare whether any act by this Act required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(4) A liquidator appointed by the Court shall be known as official liquidator or provisional official liquidator as the case may be, and a liquidator shall be described by the style of liquidator of the particular company in respect of which he is appointed and not by his individual name.

(5) During any period in which there shall be no liquidator all the property of the company shall be deemed to be in the custody of the Court.

(6) Every liquidator shall, within seven days of his appointment, file with the Registrar a notice of his appointment.

(7) A liquidator appointed by the Court shall receive such salary or remuneration, by way of percentage or otherwise, as the Court may direct; and if more liquidators than one are appointed, their remuneration shall be distributed amongst them in such proportions as the Court directs.

(8) The acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

211. Where a winding-up order has been made, or where a provisional liquidator has been appointed, the liquidator or provisional liquidator as the case may be, shall take into his custody or under his control all the property and things in action to which the company is or appears to be entitled.

212. Where a company is being wound up by the Court, the Court may, on the application of the liquidator, by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name, and thereupon the property to which the order relates shall vest accordingly, and the liquidator may, after giving such indemnity, if any, as the Court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding-up the company and recovering its property.
213. (1) The liquidator in a winding-up by the Court shall have power, with the sanction either of the Court or of the committee of inspection—

(a) to bring or defend any action or other legal proceeding other than an action to recover a book debt of the company in the name and on behalf of the company;

(b) to carry on the business of the company so far as may be necessary for the beneficial winding-up thereof;

(c) to pay any classes of creditors in full;

(d) to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;

(e) to compromise all calls and liabilities to calls, debts, and all liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory, or alleged contributor, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding-up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

(2) The liquidator in a winding-up by the Court shall have power—

(a) to bring any action to recover book debts of the company in the name and on behalf of the company:

(b) where the amount involved does not exceed One Hundred Pounds, without the sanction of either the Court or the committee of inspection, to exercise any of the powers contained in paragraphs (d) and (e) of subsection (1) of this section:

(c) to sell the real and personal property and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels:

(d) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company’s seal:

(e) to prove rank and claim in the bankruptcy, insolvency, or sequestration of any contributory for any balance against his estate, and to receive dividends in the bankruptcy, insolvency, or sequestration in respect of that balance as a separate debt due from the bankrupt or insolvent and ratably with the other separate creditors:
(f) to draw, accept, make, and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made, or indorsed by or on behalf of the company in the course of its business:

(g) to raise on the security of the assets of the company any money requisite:

(h) to take out in his official name letters of administration to the estate of any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money be deemed to be due to the liquidator himself:

(i) to employ a solicitor to assist him in the performance of his duties:

(j) to appoint an agent to do any business which the liquidator is unable to do himself:

(k) to do all such other things as may be necessary for winding-up the affairs of the company and distributing its assets.

(3) The exercise by the liquidator in a winding-up by the Court of the powers conferred by this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

(4) The liquidator shall not, subject to the order of any Judge, sell any of the assets of the company until he has lodged with the Registrar a copy of the balance-sheet, certified as correct by an authorised auditor, and showing the financial position of the company as at the date of the commencement of the winding-up.

Penalty—Fifty Pounds.

214. (1) Subject to the provisions of this Act, the liquidator of a company which is being wound up by the Court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall, in case of conflict, be deemed to override any directions given by the committee of inspection.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories by resolution, either at the meeting to consider the appointment of liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories, as the case may be.
(3) The liquidator may apply to the Court in manner prescribed for directions in relation to any particular matter arising under the winding-up.

(4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

215. Every liquidator of a company which is being wound up by the Court shall keep, in manner prescribed by Rules of Court, proper books, in which he shall cause to be made entries or minutes of proceedings at meetings and of such other matters as may be prescribed by Rules of Court, and any creditor or contributory may, subject to the control of the Court, personally or by his agent inspect any such books.

216. (1) Every liquidator of a company which is being wound up by the Court shall, in such manner and at such times as the Rules or the Court may from time to time direct, pay all money received by him into such bank and account as the Court may from time to time appoint.

(2) If any such liquidator at any time retains for more than seven days a sum exceeding Ten Pounds, or such other amount as the Court in any particular case authorises him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall pay interest on the amount so retained in excess at the rate of twenty per centum per annum, and shall be liable to disallowance of all or such part of his remuneration as the Court may think just and to be removed from his office by the the Court, and shall be liable to pay any expense occasioned by reason of his default.

(3) A liquidator of a company which is being wound up by the Court shall not pay any sums received by him as liquidator into his private banking account.

217. (1) Every liquidator of a company which is being wound up by the Court shall at such times as may be prescribed, but not less than once in each year during his tenure of office, lodge with the Registrar an account in triplicate in the form prescribed by Rules of Court of his receipts and payments as liquidator.

(2) The account shall be verified by a statutory declaration in the form prescribed by Rules of Court.

(3) The Registrar may cause the account to be audited by an authorised auditor, and for the purpose of the audit the liquidator shall furnish the auditor with such vouchers and information as he may require, and the auditor may at any time require the production of and inspect any books or accounts kept by the liquidator.

(4) When the account has been audited a copy thereof shall be filed with and kept by the Registrar, and the other copies shall be delivered to the liquidator who shall forthwith file one copy in the office of the Court, and who shall keep the other copy, and each copy shall be open to the inspection of any creditor or of any person interested.
(5) The liquidator shall cause the account, when audited, or a summary thereof, to be printed or typewritten, and shall send a copy of the account or summary by post to every creditor and contributory.

(6) The costs of an audit under this section shall be fixed by the Companies Auditors’ and Liquidators’ Board, and be part of the expenses of winding up.

218. (1) The Court shall take cognisance of the conduct of liquidators of companies which are being wound up by the Court, and if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by statute, rules, or otherwise with respect to the performance of his duties, or if any complaint is made to the Court by any creditor or contributory in regard thereto, the Court shall inquire into the matter and take such action thereon as it may think expedient.

(2) The Court may at any time require any liquidator of a company which is being wound up by the Court to answer any inquiry in relation to any winding-up in which he is engaged, and may, if the Court thinks fit, examine him or any other person on oath concerning the winding-up.

(3) The Court may also direct a local investigation to be made of the books and vouchers of the liquidator.

219. (1) When the liquidator of a company which is being wound up by the Court has realised all the property of the company, or so much thereof as can, in his opinion, be realised without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, or has resigned or has been removed from his office, the Court shall, on his application, cause a report on his accounts to be prepared, and on his complying with all the requirements of the Court, shall take into consideration the report and any objection which may be urged by any creditor or contributory or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly.

(2) Where the release of a liquidator is withheld the Court may, on the application of any creditor or contributory or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

(3) An order of the Court releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company or otherwise in relation to his conduct as liquidator; but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) Where the liquidator has not previously resigned or been removed his release shall operate as a removal of him from his office.
Committees of Inspection.

220. (1) When a winding-up order has been made by the Court it shall be the business of the separate meetings of creditors and contributories summoned under section 207 of this Act, to determine further whether or not an application is to be made to the Court for the appointment of a committee of inspection to act with the liquidator and who are to be members of the committee if appointed.

(2) Where the winding-up order has been made on the ground that the company is unable to pay its debts, the Court may dispense with the meeting of the contributories directed to be summoned under section 207 aforesaid.

(3) The Court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matters aforesaid, the Court shall decide the difference and make such order thereon as the Court may think fit.

221. (1) A committee of inspection appointed in pursuance of this Act shall, subject to any order made under subsection (2) of the last preceding section, consist of creditors and contributories of the company, or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories, or as in case of difference may be determined by the Court.

(2) The committee shall meet at such times as they from time to time appoint, and failing such appointment at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present.

(4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who, together with himself, represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors (if he represents creditors) or of contributories (if he represents contributories) of which seven days' notice has been given stating the object of the meeting.

(7) On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may by resolution reappoint the same, or appoint another creditor or contributory to fill the vacancy.
PART VI.

Powers of Court where no committee of inspection.
Imp., s. 200.
Vic., s. 162.
Tas., s. 163.
New.

Power to stay winding-up.
Imp., s. 202.
S.A., s. 149

Settlement of list of contributories and application of assets.
Imp., s. 203.
Vic., s. 165.
Tas., s. 166.
S.A., s. 119.

Delivery of property to liquidator.
Imp., s. 204.
Vic., s. 166.
Tas., s. 167.
S.A., s. 121.

Payment of debts by contributory to company and extent to which set off allowed.
Imp., s. 205.
Vic., s. 167.
Tas., s. 168.
S.A., s. 122.

222. Where there is no committee of inspection, the Court on the application of the liquidator, may do any act, or thing, or give any direction or permission which is by this Act authorised or required to be done or given by the committee.

General Powers of Court in case of Winding-up by Court.

223. (1) The Court may at any time after an order for winding-up, on the application either of the liquidator, or any creditor or contributory, and on proof to the satisfaction of the Court, that all proceedings in relation to the winding-up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, and on such terms and conditions as the Court thinks fit.

(2) On any application under this section the Court may, before making an order, require the liquidator to furnish to the Court a report with respect to any facts or matters which are in his opinion relevant to the application.

224. (1) As soon as may be after making a winding-up order in respect of a company other than a no-liability company, the Court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected and applied in discharge of its liabilities:

Provided that, where it appears to the Court that it will not be necessary to make calls on or adjust the rights of contributories, the Court may dispense with the settlement of a list of contributories.

(2) In settling the list of contributories the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

(3) The list of contributories when settled shall be prima facie evidence of the liabilities of the persons named therein to be contributories.

225. The Court may at any time after making a winding-up order require any contributory for the time being on the list of contributories, and any trustee, receiver, banker, agent, or officer of the company, to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the Court directs, to the liquidator any money, property, or books and papers in his hands to which the company is prima facie entitled.

226. (1) The Court may at any time after making a winding-up order in respect of a company, other than a no-liability company, make an order on any contributory for the time being on the list of contributories, to pay in manner directed by the order
any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(2) The Court in making such an order may—

(a) in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and

(b) in the case of a limited company, make to any director or manager whose liability is unlimited or to his estate the like allowance.

(3) In the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

227. (1) The Court may at any time after making a winding-up order in respect of any company other than a no-liability company and either before or after it has ascertained the sufficiency of the assets of the company, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding-up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made.

(2) In making a call the Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

228. (1) The Court may order any contributory, purchaser, or other person from whom money is due to the company to pay the amount due into some bank or any branch thereof named in such order to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

(2) All moneys and securities paid or delivered into any bank or any branch thereof, in the event of a winding-up by the Court, shall be subject in all respects to the orders of the Court.

229. (1) An order made by the Court on a contributory shall subject to any right of appeal be conclusive evidence that the money (if any) thereby appearing to be due or ordered to be paid is due.

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings.
The liquidator of a company, whether provisional or otherwise, which is being wound up by the Court may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the Court, and the Court may on such application appoint a special manager of the said estate or business to act during such time as the Court may direct, with such powers, including any of the powers of a receiver or manager, as may be intrusted to him by the Court.

(2) The special manager shall give such security, and account in such manner, as the Court may direct.

(3) The special manager shall receive such remuneration as may be fixed by the Court.

(4) The special manager may at any time resign or on cause shown be removed by the Court.

The Court may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts are proved.

The Court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

The Court may, at any time after making a winding-up order, make such order for inspection of the books and papers of the company by creditors and contributories as the Court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges, and expenses incurred in the winding-up in such order of priority as the Court thinks just.

The Court may, at any time after the appointment of a provisional liquidator or the making of a winding-up order, summon before it any officer of the company, or person known or suspected to have in his possession any property of the company, or supposed to be indebted to the company, or any person whom the Court deems capable of giving information concerning the promotion, formation, trade dealings, affairs, or property of the company.

(2) The Court may examine him on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories, and may reduce his answers to writing, and require him to sign them,
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(3) The Court may require him to produce any books and papers in his custody or power relating to the company, but where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the Court shall have jurisdiction in the winding-up to determine all questions relating to that lien.

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, not having a lawful impediment, made known to the Court at the time of its sitting and allowed by it, the Court may cause him to be apprehended and brought before the Court for examination.

236. (1) When an order has been made for winding-up a company by the Court, and the liquidator has made a further report under this Act stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since its formation, the Court may, after consideration of the report and any other relevant matters, direct that any person who has taken any part in the promotion or formation of the company, or has been a director or officer of the company, shall attend before the Court on a day appointed by the Court for that purpose, and be examined as to the promotion or formation or the conduct of the business of the company or as to his conduct and dealings as director or officer thereof.

(2) The liquidator and any creditor or contributory may take part in the examination either personally or by solicitor or counsel.

(3) The Court may put or allow to be put such questions to the person examined as the Court thinks fit, notwithstanding that any question may be of a criminating nature.

(4) The person examined shall be examined on oath, and shall answer all such questions as the Court may put or allow to be put to him.

(5) A person ordered to be examined under this section shall, at his own cost, before his examination, be furnished with a copy of the liquidator's report, and may at his own cost employ a solicitor, with or without counsel, who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him. Provided that if any such person applies to the Court to be exculpated from any charges made or suggested against him, it shall be the duty of the liquidator to appear on the hearing of the application and call the attention of the Court to any matters which appear to the liquidator to be relevant, and if the Court, after hearing any evidence given or witnesses called by the liquidator, grants the application, the Court may allow the applicant such costs as in its discretion it may think fit.

(6) Notes of the examination shall be taken down in writing, and shall be read over to or by and signed by the person examined and
may thereafter be used in evidence against him, and shall be open to
the inspection of any creditor or contributory at all reasonable times.

(7) The Court may, if it thinks fit, adjourn the examination from
time to time.

(8) An examination under this section or under the last preceding
section may, if the Court so directs and subject to general rules,
be held before a Master or other officer of the Court or any Special
Magistrate and the powers of the Court under this and the last
preceding section as to the conduct of the examination, but not as
to costs, may be exercised by the person before whom the examina-
tion is held.

(9) On the hearing of any such application the liquidator may
himself give evidence or call witnesses.

237. (1) Where an order has been made for winding-up a company
by the Court, and the liquidator has made a further report under
this Act stating that, in his opinion, a fraud has been committed by
a person in the promotion or formation of the company, or by any
director or other officer of the company in relation to the company
since its formation, the Court may, on the application of the
liquidator, order that that person, director, or officer shall not,
without the leave of the Court, be a director of or in any way,
whether directly or indirectly, be concerned in or take part in the
management of a company for such period, not exceeding five years,
from the date of the report as may be specified in the order.

(2) The liquidator shall, where he intends to make an application
under the last foregoing subsection, give not less than ten days’
notice of his intention to the person charged with the fraud, and on
the hearing of the application that person may appear and himself
give evidence or call witnesses.

(3) It shall be the duty of the liquidator to appear on the hearing
of an application by him for an order under this section and on an
application for leave under this section, and to call the attention of
the Court to any matters which appear to him to be relevant, and
on any such application the liquidator may himself give evidence or
call witnesses.

(4) If any person acts in contravention of an order made under
this section he shall be guilty of a misdemeanour.

(5) The provisions of this section shall have effect notwithstanding
that the person concerned may be criminally liable in respect of the
matters on the ground of which the order is to be made.
238. The Court at any time, either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to quit the State, or otherwise to abscond, or to remove or conceal any of his property for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested and his books and papers and movable personal property to be seized, and him and them to be safely kept until such time as the Court may order.

239. Any powers by this Act conferred on the Court shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor for the recovery of any call or other sums.

240. Provision may be made by general rules for enabling or requiring all or any of the powers and duties conferred and imposed on the Court by this Act in respect of the following matters:

1. the holding and conducting of meetings to ascertain the wishes of creditors and contributories;

2. the settling lists of contributories and rectifying the register of members where required, and the collecting and applying of the assets;

3. the paying, delivery, conveyance, surrender, or transfer of money, property, books, or papers to the liquidator;

4. the making calls and adjusting the rights of contributories;

5. the fixing of a time within which debts and claims must be proved,

provided that the liquidator shall not without the special leave of the Court rectify the register of members, and shall not make any call without either the special leave of the Court or the sanction of the committee of inspection.

241. (1) When the affairs of a company have been completely wound up the Court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(2) The order shall, within fourteen days from the date thereof, be reported by the liquidator to the Registrar, who shall make in his books a minute of the dissolution of the company.

(3) If the liquidator makes default in complying with the requirements of this section he shall be liable to a default fine of Five Pounds.
PART VI.

Circumstances in which a company may be wound up voluntarily.
Imp., s. 225.
Vic., s. 182.
Tas., s. 183.
S.A., s. 134.
with additions.

Notice of resolution to wind up voluntarily.
Imp., s. 226.
Tas., s. 186.
Vic., s. 185.
S.A., s. 136.

Commencement of voluntary winding-up.
Imp., s. 227.
Vic., s. 183.
Tas., s. 184.
S.A., s. 135.

Effect of voluntary winding-up on business and status of company.
Imp., s. 228.
Vic., s. 184.
Tas., s. 154.
S.A., s. 137, part.

Avoidance of transfers, &c., after commencement of voluntary winding-up.
Imp., s. 229.
Vic., s. 205.
Tas., s. 206.
S.A., s. 12.

III.—Voluntary Winding-up.

Resolutions for, and Commencement of Voluntary Winding-up.

242. (1) A company may be wound up voluntarily—

(a) When the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs on the occurrence of which the articles provide that the company is to be dissolved and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily:

(b) If the company resolves by special resolution that the company be wound up voluntarily:

(c) If the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business and that it is advisable to wind it up.

(2) In this Act the expression "a resolution for voluntary winding-up" means a resolution passed under any of the provisions of subsection (1) of this section.

243. (1) When a company has passed a resolution for voluntary winding-up, it shall within seven days after the passing of the resolution, give notice of the resolution by advertisement in the Gazette, and file a copy thereof certified by the chairman of the meeting with the Registrar.

(2) If default is made in complying with this section the company and every officer of the company who is in default shall be liable to a default fine, and for the purposes of this subsection the liquidator of the company shall be deemed to be an officer of the company.

244. A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution for voluntary winding-up.

Consequences of Voluntary Winding-up.

245. In the case of a voluntary winding-up the company shall from the commencement of the winding-up cease to carry on its business except so far as may be required for the beneficial winding-up thereof:

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

246. Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company made after the commencement of a voluntary winding-up, shall be void.
Declaration of Solvency.

247. (1) Where it is proposed to wind up a company voluntarily the directors of the company or, in the case of a company having more than two directors, the majority of the directors may, at a meeting of the directors held before the date on which the notices of the meeting at which the resolution for the winding-up of the company is to be proposed are sent out, make a statutory declaration to the effect that they have made a full inquiry into the affairs of the company, and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within a period not exceeding twelve months from the commencement of the winding-up.

(2) A declaration made as aforesaid shall have no effect for the purposes of this Act unless it is filed with the Registrar before the date mentioned in subsection (1) of this section.

(3) (a) Any person who makes a declaration of solvency under this section without proper justification therefor shall be liable to a fine not exceeding Two Hundred Pounds.

(b) Where a declaration of solvency is made under this section, and it appears in the winding-up of the company that the company will be unable to pay its debts in full within a period of twelve months from the date of the commencement of the winding-up, the onus shall be upon any person making a declaration of solvency in respect thereof to show that he had proper justification in forming the opinion declared to by him.

(c) In considering whether a person had proper justification for forming the opinion declared to by him in a declaration of solvency, the Court, having cognisance of the matter, may have regard to such considerations as would in the particular circumstances usually guide a business man.

(4) A winding-up in the case of which a declaration has been made and filed in accordance with this section is in this Act referred to as "a members' voluntary winding-up," and a winding-up in the case of which a declaration has not been made and filed as aforesaid, is in this Act referred to as a "creditors' voluntary winding-up".

Provisions Applicable to a Members' Voluntary Winding-up.

248. The provisions contained in the five sections of this Act next following shall apply in relation to a members' voluntary winding-up.

249. (1) The company in general meeting shall appoint one or more liquidators for the purpose of winding-up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.

(2) On the appointment of a liquidator all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof.
PART VI.

Power to fill vacancy in office of liquidator.

Imp., s. 233.
S.A., s. 142.

250. (1) If a vacancy occurs by death, resignation, or otherwise, in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner provided by this Act or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the Court.

Power of liquidator to accept shares, &c., as consideration for sale of property of company.

Imp., s. 234.
Vic., s. 193.
The., s. 230.
S.A., cf., ss. 173 and 176.

251. (1) Where a company is proposed to be or is in course of being wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Act or not (in this section called "the transferee company") the liquidator of the first-mentioned company (in this section called "the transferor company"), may, with the sanction of a special resolution of that company conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation, or part compensation, for the transfer or sale, shares, policies, or other like interests in the transferee company for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) If any member of the transferor company who did not vote in favour of the special resolution expresses his dissent therefrom in writing, addressed to the liquidator and left at the registered office of the company within seven days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration in manner provided by this section.

(4) If the liquidator elects to purchase the member's interest the purchase-money shall, if fixed by arbitration, but subject to any express provision in the award, be payable forthwith after the making of the award, and in any case must be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for winding-up the company or for appointing liquidators,
but if an order is made within a year for winding-up the company by or subject to the supervision of the Court the special resolution shall not be valid unless sanctioned by the Court.

(6) For the purposes of an arbitration under this section the provisions of the Arbitration Acts, 1891 and 1921, shall be incorporated with this Act and, shall apply as if there were a submission for reference to two arbitrators, one to be appointed by each party; and the appointment of an arbitrator may be made under the hand of the liquidator, or, if there is more than one liquidator, then under the hands of any two or more of the liquidators.

252. (1) In the event of the winding-up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding-up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding-up during the preceding year.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding Five Pounds.

253. (1) As soon as the affairs of the company are fully wound up, the liquidator shall make up an account of the winding-up, showing how the winding-up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account and giving any explanation thereof.

(2) The meeting shall be called by advertisement in the Gazette, and once at least in a newspaper circulating in the district where the registered office or principal place of business of the company is situate, specifying the time, place, and object thereof, and published one month at least before the meeting.

(3) Within one week after the meeting, the liquidator shall file with the Registrar a copy of the account, and shall make a return to him of the holding of the meeting and of its date, and if the copy is not filed or the return is not made in accordance with this subsection, the liquidator shall be liable to a default fine:

Provided that, if a quorum is not present at the meeting, the liquidator shall, in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this subsection as to the making of the return shall be deemed to have been complied with.

(4) On the expiration of three months from the filing of the account and making of either of the returns hereinbefore mentioned, the company shall be deemed to be dissolved:
Provided that the Court may, on the application of the liquidator, or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(5) It shall be the duty of the person on whose application an order of the Court under this section is made, within seven days after the making of the order, to file with the Registrar an office copy of the order, and if that person fails so to do, he shall be liable to a default fine.

Provisions applicable to a Creditors' Voluntary Winding-up.
254. The provisions contained in the eight sections of this Act next following shall apply in relation to a creditors' voluntary winding-up.

255. (1) The company shall cause a meeting of the creditors of the company to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding-up is to be proposed, and shall cause the notices of the said meeting of creditors to be sent by post to each of the creditors simultaneously with the sending of the notices of the said meeting of the company. At least seven days' notice of such meeting shall be given to the creditors.

(2) The meeting of creditors shall be held at a time and place convenient to the majority in value of the creditors.

(3) The creditors may appoint one of their number or the director appointed under subsection (5) of this section to preside at the meeting.

(4) The company shall cause notice of the meeting of the creditors to be advertised once in the Gazette and once at least in two local newspapers circulating in the district where the registered office or principal place of business of the company is situate.

(5) The directors of the company shall—

(a) cause a full statement of the position of the company's affairs including—

(i.) a detailed statement of the assets of the company showing the present value of the assets, firstly as a going concern and secondly on separate sales thereof; and

(ii.) a list of the creditors of the company, the estimated amount of their claims, distinguishing secured and unsecured, and creditors entitled to preference under section 279 of this Act, to be laid before the meeting of creditors to be held as aforesaid; and

(b) appoint one of their number to attend at the said meeting.

(6) It shall be the duty of the director appointed to attend the meeting of creditors and the secretary to attend thereat and make full disclosure to the meeting of the company's position, affairs, and the circumstances leading up to the proposed liquidation.
(7) If the meeting of the company at which the resolution for winding-up the company is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of subsection (1) of this section shall have effect as if it had been passed immediately after the passing of the resolution for winding-up the company.

(8) If default is made—
   (a) by the company in complying with subsections (1), (2), and (4) of this section:
   (b) by the directors of the company in complying with subsection (5) of this section:
   (c) by any director or secretary of the company in complying with subsection (6) of this section,
the company, directors, or director, or secretary, as the case may be, except in case of incapacity from illness or of absence from the State, shall be liable to a fine not exceeding Fifty Pounds, and, in case of default by the company, every officer of the company who is in default shall be liable to the like penalty.

256. The creditors and the company at their respective meetings mentioned in the last foregoing section of this Act may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors, the person, if any, nominated by the company shall be liquidator:

Provided that in the case of different persons being nominated any director, member, or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the Court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing some other person to be liquidator instead of the person appointed by the creditors.

257. The creditors at the meeting to be held in pursuance of section 255 of this Act, or at any subsequent meeting, may, if they think fit, appoint a committee of inspection consisting of not more than five persons, and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding-up the company is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number:

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection, and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the Court otherwise directs, be qualified to act as members of the committee, and on any application to the Court under this provision the Court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.
Subject to the provisions of this section and to general rules, the provisions of section 221 of this Act (except subsection (1)) shall apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding-up by the Court.

258. (1) The creditors may fix the remuneration to be paid to the liquidator or liquidators, or may delegate such power to the committee of inspection (if any).

(2) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors sanction the continuance thereof.

259. (1) If a vacancy occurs by death, resignation, or otherwise in the office of a liquidator, other than a liquidator appointed by or by the direction of the Court, the creditors may fill the vacancy.

(2) For that purpose a meeting of creditors may be called by any two creditors or by the Registrar.

260. The provisions of section 251 of this Act shall apply in the case of a creditors' voluntary winding-up as in the case of a members' voluntary winding-up, with the modification that the powers of the liquidator under the said section shall not be exercised except with the sanction either of the Court or of the committee of inspection.

261. (1) In the event of the winding-up continuing for more than one year the liquidator shall summon a general meeting of the company and a meeting of creditors at the end of the first year from the commencement of the winding-up, and of each succeeding year or as soon thereafter as may be convenient, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding-up during the preceding year.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding Five Pounds.

262. (1) As soon as the affairs of the company are fully wound up the liquidator shall make up an account of the winding-up showing how the winding-up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meeting and giving any explanation thereof.

(2) Each such meeting shall be called by advertisement in the Gazette, and once at least in a newspaper circulating in the district where the registered office or principal place of business of the company is situate, specifying the time, place, and object thereof, and published one month at least before the meeting.

(3) Within one week after the date of the meetings, or, if the meetings are not held on the same date, after the date of the latter meeting, the liquidator shall file with the Registrar a copy of the
account, and shall make a return to him of the holding of the meetings and of their dates, and if the copy is not filed or the return is not made in accordance with this subsection the liquidator shall be liable to a default fine:

Provided that if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return hereinbefore mentioned make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this subsection as to the making of the return shall be deemed to have been complied with.

(4) On the expiration of three months from the filing of the account and making of either of the returns hereinbefore mentioned the company shall be deemed to be dissolved:

Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(5) It shall be the duty of the person on whose application an order of the Court under this section is made, within seven days after the making of the order, to file with the Registrar an office copy of the order, and if that person fails so to do he shall be liable to a default fine.

Provisions Applicable to every Voluntary Winding-up.

263. The provisions contained in the eight sections of this Act next following shall apply to every voluntary winding-up whether a members' or a creditors' winding-up.

264. Subject to the provisions of this Act as to preferential payments, the property of the company shall on its winding-up be applied in satisfaction of its liabilities pari passu, and, subject to such application shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

265. (1) The liquidator may—

(a) in the case of a members' voluntary winding-up, with the sanction of an extraordinary resolution of the company, and, in the case of a creditors' voluntary winding-up, with the sanction of the Court, a meeting of the creditors, or the committee of inspection, exercise any of the powers given by paragraphs (c), (d), and (e) of subsection (1) of section 213 of this Act to a liquidator in a winding-up by the Court:

(b) without sanction, exercise any of the other powers by this Act, given to the liquidator in a winding-up by the Court:
(c) exercise the power of the Court under this Act of settling a list of contributories, and the list of contributories shall be prima facie evidence of the liability of the persons named therein to be contributories:

(d) exercise the power of the Court of making calls:

(e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution or for any other purpose he may think fit.

(2) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(3) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined at the time of their appointment, or in default of such determination, by any number not less than two.

(4) Section 217, except subsection (5), shall apply to the liquidator of a company which is being wound up voluntarily, but it shall not be necessary to file a copy of the audited account in the office of the Court.

266. (1) If from any cause whatever there is no liquidator acting the Court may appoint a liquidator.

(2) The Court may, on cause shown, remove any liquidator, and appoint another liquidator.

267. (1) The liquidator shall, within seven days after his appointment, file with the Registrar a notice of his appointment.

(2) If the liquidator fails to comply with the requirements of this section, he shall be liable to a fine not exceeding Five Pounds for every day during which the default continues.

268. (1) Any arrangement entered into between a company about to be or in the course of being wound up, and its creditors shall, subject to the right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the Court against it, and the Court may thereupon, as it thinks just, amend, vary, or confirm the arrangement.

269. (1) The liquidator or any contributory or creditor may apply to the Court to determine any question arising in the winding-up of a company, or to exercise as respects the enforcing of calls, or any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court.

(2) The Court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order or decree on the application as it thinks just.
270. (1) All costs, charges, and expenses properly incurred in the winding-up, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

(2) The costs and expenses of winding-up shall include the costs and fees of any solicitor and the fees of any authorised auditor retained by the company for services rendered for the company, preparatory to, in the course of, and incidental to the winding-up of the company. The costs of a solicitor exceeding Ten Pounds shall be taxed by the Master of the Court; the fees of any authorised auditor shall be fixed by the Companies Auditors' and Liquidators' Board.

271. The voluntary winding-up of a company shall not bar the right of any creditor or contributory to have it wound up by the Court, but in the case of an application by a contributory, the Court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding-up.

Winding-up Subject to Supervision of Court.

272. When a company has passed a resolution for voluntarily winding-up, the Court may make an order that the voluntary winding-up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories, or others to apply to the Court, and generally on such terms and conditions as the Court thinks just.

273. A petition for the continuance of a voluntary winding-up subject to the supervision of the Court, shall for the purpose of giving jurisdiction to the Court over actions and proceedings be deemed to be a petition for winding-up by the Court.

274. A winding-up subject to the supervision of the Court shall, for the purposes of sections 199 and 200 of this Act, be deemed to be a winding-up by the Court.

275. (1) Where an order is made for a winding-up subject to supervision, the Court may by that or any subsequent order remove any liquidator appointed in the voluntary winding-up or appoint any new or additional liquidator.

(2) A liquidator appointed by the Court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if he had been duly appointed in accordance with the provisions of this Act with respect to the appointment of liquidators in a voluntary winding-up.

(3) The Court may remove any liquidator so appointed by the Court or any liquidator continued under the supervision order, and fill any vacancy occasioned by the removal or by death or resignation.

276. (1) Where an order is made for a winding-up subject to supervision, the liquidator may, subject to any restrictions imposed
Debts of all descriptions to be proved.

Imp., s. 261.
Vic., s. 206.
Tas., s. 207.
S.A., s. 167.

Application of bankruptcy rules in winding-up of insolvent companies.

Imp., s. 262.
Vic., s. 207.
Tas., s. 208.
S.A., s. 170.
Sup. Ct. Act., 1878, s. 6.

Preferential payments.

Imp., s. 264.
Vic., s. 208.
Tas., s. 209.
S.A., s. 161.

by the Court, exercise all his powers without the sanction or intervention of the Court in the same manner as if the company were being wound up altogether voluntarily:

Provided that the powers specified in paragraphs (c), (d), and (e) of subsection (1) of section 213 of this Act shall not be exercised by the liquidator except with the sanction of the Court or, in a case where before the order the winding-up was a creditors' voluntary winding-up, with the sanction of the Court, a meeting of the creditors, or the committee of inspection.

(2) A winding-up subject to the supervision of the Court is not a winding-up by the Court for the purpose of the provisions of this Act which are set out in the Ninth Schedule to this Act, but, subject as aforesaid, an order for a winding-up, subject to supervision, shall for all purposes be deemed to be an order for winding-up by the Court:

Provided that, where the order for winding-up, subject to supervision, was made in relation to a creditors' voluntary winding-up in which a committee of inspection had been appointed, the order shall be deemed to be an order for winding-up by the Court for the purpose of section 213 (except subsection (1) thereof) of this Act, except in so far as the operation of that section is excluded in a voluntary winding-up by Rules of Court.

IV.—Provisions Applicable to Every Mode of Winding-up.

Proof and Ranking of Claims.

277. In every winding-up (subject in the case of insolvent companies to the application, in accordance with the provisions of this Act, of the law of bankruptcy) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

278. Except so far as is otherwise enacted in the winding-up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors, and to debts provable, and to the valuation of annuities, and future and contingent liabilities, and as to the priorities of debts and liabilities, as are in force for the time being under the law of bankruptcy with respect to estates of persons adjudged bankrupt, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding-up, and make such claims against the company as they respectively are entitled to by virtue of this section.

279. (1) Subject to subsections 7 and 8 of this section, in a winding-up there shall be paid in priority to all other debts after all costs, liquidator's remuneration, and expenses of or incurred in the winding-up as provided by this Act—

(a) All wages or salary (whether or not earned wholly or in part by way of commission not being an overriding
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commission) of any clerk, servant, or commercial traveller
in respect of services rendered to the company during
four months next before the relevant date not exceeding
Fifty Pounds:

(b) All wages of any workman or laborer not exceeding
Twenty-five Pounds, whether payable for time or for
piecework, in respect of services rendered to the company
during four months next before the relevant date:

Provided that, where any laborer in husbandry has entered
into a contract for the payment of a portion of his wages in
a lump sum at the end of the year of hiring, he shall have
priority in respect of the whole of such sum, or a part
thereof, as the court may decide to be due under the
contract proportionate to the time or amount of service
up to the relevant date:

(c) Unless the company is being wound up voluntarily merely
for the purposes of reconstruction or of amalgamation
with another company or unless the company has at the
commencement of the winding-up under such a contract
with insurers as is mentioned in section 13 of the
Workmen's Compensation Act, 1932, rights capable of
being transferred to and vested in the workman, all
amounts (not exceeding in any individual case One
Hundred Pounds) due in respect of compensation, or
liability for compensation, under the said Act accrued
before the relevant date:

(d) All assessed land tax and income tax assessed prior to the
relevant date and having become due and payable within
the preceding twelve months, but not exceeding in the
whole one year's assessment.

(2) Where any compensation under the Workmen's Compensation
Act, 1932, or any amendment thereof, is a weekly payment, the
amount due in respect thereof 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 the employer made an application for that purpose
under the said Act.

(3) Where any payment on account of wages or salary has been
made to any clerk, servant, workman, or laborer in the employment
of a company by any person under section 185 of this Act or out of
money advanced by some person for that purpose, that person 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 that clerk, servant, workman, or laborer would have been
entitled to priority in the winding-up, has been diminished by
reason of the payment having been made.

(4) The foregoing debts shall—

(a) rank equally among themselves and be paid in full, unless
the assets are insufficient to meet them, in which case
they shall abate in equal proportions; and

(b) so far as the assets of the company available for payment of
general creditors are insufficient to meet them (excepting
PART VI.

Insurance moneys and assets recovered by indemnity.

Com. Bankruptcy Act, 1924-32, 84 (1A) and (2).

Creditors to receive interest before surplus is divided.

S. 159 (S.A.), altered.

The debts mentioned in paragraph (d) of subsection (1) of this section have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(5) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding-up, the foregoing debts shall be discharged forthwith, so far as the assets are sufficient to meet them.

(6) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the relevant date, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on or the proceeds of the sale thereof:

Provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(7) (a) Where a company has before the commencement of the winding-up, insured itself against liabilities to third parties, and any such liability has been incurred by the company either before or after the commencement of winding-up, the amount paid to the company by the insurer in respect of such liability shall, after deducting any expenses of or incidental to getting in such amount, be paid in full to the third party to whom such liability was incurred.

(b) If the liability of the insurer to the company is less than the liability of the company to the third party nothing in this subsection shall limit the rights of the third party in respect of the balance.

(c) The provisions of this subsection shall take effect notwithstanding any agreement to the contrary entered into after the commencement of this Act.

(8) Where in any liquidation assets have been recovered by means of an indemnity for costs of litigation given by certain creditors, the Court may make such order as it deems just with respect to the distribution of those assets with a view to giving the indemnifying creditors an advantage over others in consideration of the risk run by them in giving the indemnity.

(9) In this section the expression "the relevant date" means—

(a) In the case of a company ordered to be wound up compulsorily, which had not previously commenced to be wound up voluntarily, the date of the winding-up order; and

(b) In any other case, the date of the commencement of the voluntary winding-up.

280. In a winding-up, under this Act, the contributories or shareholders shall not be entitled to have any surplus, after payment of Twenty Shillings in the Pound on the debts of the company, divided amongst themselves until, first the creditors of the company whose debts are entitled to carry interest shall have received interest.
on such debts at the rate of Four Pounds per centum per annum, to be calculated from the date of the commencement of the winding-up of the company; and, secondly, all other creditors shall have been paid interest on their debts, from the same date, at the rate of Four Pounds per centum per annum.

**Effect of Winding-up on Antecedent and Other Transactions.**

281. (1) Any conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property which would, if made or done by or against an individual, be deemed in his bankruptcy a fraudulent preference shall, if made or done by or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors, and be invalid accordingly.

(2) For the purposes of this section the presentation of a petition for winding up a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, and a resolution for voluntarily winding up in any other case, shall be deemed to correspond with the order for sequestration in the case of an individual.

(3) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents.

282. Where a company is being wound up, a floating charge on the undertaking or property of the company created within six months of the commencement of the winding-up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of, or subsequently to the creation of, and in consideration for the charge, together with interest on that amount at the rate of Five Pounds per centum per annum.

283. (1) Where any part of the property of a company which is being wound up consists of—

(a) land of any tenure burdened with onerous covenants;
(b) shares or stock in companies;
(c) unprofitable contracts; or
(d) any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money—

the liquidator of the company, notwithstanding that he has endeavored to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, may, subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding-up or such extended period as may be allowed by the Court, disclaim the property:

Provided that, where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding-up, the power under this section of disclaiming...
the property may be exercised at any time within twelve months after he first became aware thereof or such extended period as may be allowed by the Court.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests, and liabilities of the company, and the property of the company, in or in respect of the property disclosed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) Except as prescribed a liquidator shall not be at liberty to disclaim a lease without leave of the Court, and the Court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the Court thinks just.

(4) The liquidator shall not be entitled to disclaim any property under this section in any case where—

(a) an application in writing has been made to him by any persons interested in the property requiring him to decide whether he will or will not disclaim; and

(b) the liquidator has not, within a period of twenty-eight days after the receipt of the application or such further period as may be allowed by the Court, given notice to the applicant that he disclaims the property or not.

In the case of a contract, if the liquidator, after such an application as aforesaid, does not within the said period or further period, disclaim the contract, the company shall be deemed to have adopted it.

(5) The Court may, on the application of the person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as the Court thinks just, and any damages payable under the order to any such person may be proved by him as a debt in the winding-up.

(6) The Court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any persons entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just.

(7) On any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without, unless otherwise prescribed, any conveyance or assignment for the purpose.

(8) Where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favor of any person claiming
under the company, whether as under-lessee or as mortgagee by demise, except upon the terms of making that person—

(a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding-up; or

(b) if the Court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date;

and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order.

(9) Any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the Court shall have power to vest the estate and interest of the company in the property in any person liable either personally or in a representative character, and either alone or jointly with the company to perform the lessee's covenants in the lease, freed and discharged from all estates, encumbrances, and interests created therein by the company.

(10) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding-up.

284. (1) Where a creditor has issued execution against the goods or lands of a company or has attached any debt due to the company, and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding-up of the company unless he has completed the execution or attachment before the commencement of the winding-up:

Provided that—

(a) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding-up is to be proposed the date on which the creditor so had notice shall for the purpose of the foregoing provision be substituted for the date of the commencement of the winding-up; and

(b) a person who purchases in good faith under a sale by the sheriff any goods of a company on which an execution has been levied shall in all cases acquire a good title to them against the liquidator.

(2) For the purposes of this section, an execution against goods shall be taken to be completed by seizure and sale, and an attachment of a debt shall be deemed to be completed by receipt of the debt, and an execution against land shall be deemed to be completed by seizure and, in the case of an equitable interest, by the appointment of a receiver.
Duties of
sheriff as to
goods taken in
execution.
Imp., s. 269.
New.

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285. (1) Where any goods of a company are taken in execution and before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the sheriff that a provisional liquidator has been appointed or that a winding-up order has been made or that a resolution for voluntary winding-up has been passed, the sheriff shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge.

(2) Where under an execution in respect of a judgment for a sum exceeding Twenty Pounds the goods of a company are sold or money is paid in order to avoid sale, the sheriff shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for fourteen days, and if within that time notice is served on him of a petition for the winding-up of the company having been presented or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding-up of the company and an order is made or a resolution is passed, as the case may be, for the winding-up of the company, the sheriff shall pay the balance to the liquidator, who shall be entitled to retain it as against the execution creditor.

Offences Antecedent to or in Course of Winding-up.

286. (1) If any person, being a past or present officer of a company which at the time of the commission of the alleged offence is being wound up, whether by or under the supervision of the Court or voluntarily, or is subsequently ordered to be wound up by the Court or subsequently passes a resolution for voluntary winding-up—

(a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property, real and personal, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company; or

(b) does not deliver up to the liquidator, or as he directs, all such part of the real and personal property of the company as is in his custody or under his control, and which he is required by law to deliver up; or

(c) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up; or

(d) within twelve months next before the commencement of the winding-up or at any time thereafter conceals any
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part of the property of the company to the value of Ten Pounds or upwards, or conceals any debt due to or from the company; or

(e) within twelve months next before the commencement of the winding-up or at any time thereafter fraudulently removes any part of the property of the company; or

(f) makes any material omission in any statement relating to the affairs of the company; or

(g) knowing or believing that a false debt has been proved by any person under the winding-up, fails for the period of a month to inform the liquidator thereof; or

(h) after the commencement of the winding-up prevents the production of any book or paper affecting or relating to the property or affairs of the company; or

(i) within twelve months next before the commencement of the winding-up or at any time thereafter, conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of, any book or paper affecting or relating to the property or affairs of the company; or

(j) within twelve months next before the commencement of the winding-up or at any time thereafter makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company; or

(k) within twelve months next before the commencement of the winding-up or at any time thereafter fraudulently parts with, alters, or makes any omission in, or is privy to the fraudulent parting with, altering, or making any omission in, any document affecting or relating to the property or affairs of the company; or

(l) after the commencement of the winding-up or at any meeting of the creditors of the company within twelve months next before the commencement of the winding-up attempts to account for any part of the property of the company by fictitious losses or expenses; or

(m) has within twelve months next before the commencement of the winding-up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for; or

(n) within twelve months next before the commencement of the winding-up or at any time thereafter, under the false pretence that the company is carrying on its business obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for; or
PART VI.

Penalty for falsification of books.

Imp., s. 272.

Vic., s. 214.

Tas., s. 215.

S.A., s. 181.

Frauds by officers of companies which have gone into liquidation.

Imp., s. 273

New.

(o) within twelve months next before the commencement of the winding-up or at any time thereafter pawns, pledges, or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging, or disposing is in the ordinary way of the business of the company; or

(p) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding-up,

he shall be guilty of a misdemeanour, and shall, in the case of the offences mentioned respectively in paragraphs (m), (n), and (o) of this subsection, be liable on conviction on indictment to imprisonment for a term not exceeding two years, and in the case of any other offence shall be liable on conviction on indictment to imprisonment for a term not exceeding one year:

Provided that it shall be a good defence to a charge under any of paragraphs (a), (b), (c), (d), (f), (n), and (o), if the accused proves that he had no intent to defraud, and to a charge under any of paragraphs (h), (i), and (j), if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(2) Where any person pawns, pledges, or disposes of any property in circumstances which amount to a misdemeanour under paragraph (o) of subsection (1) of this section, every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged, or disposed of in such circumstances as aforesaid shall be guilty of a misdemeanour, and on conviction thereof liable to be punished in the same way as if he had received the property knowing it to have been obtained in circumstances amounting to a misdemeanour.

(3) For the purposes of this section, the expression "officer" shall include any manager or any person occupying the position of a director or in accordance with whose directions or instructions the directors of a company have been accustomed to act.

287. If any director, manager or other officer, or contributory of any company being wound up, destroys, mutilates, alters, or falsifies, any books, papers, or securities, or makes, or is privy to the making, of any false or fraudulent entry in any register, book of account, or document belonging to the company with intent to defraud or deceive any person, he shall be guilty of a misdemeanour, and be liable to imprisonment for any term not exceeding five years with or without hard labour.

288. If any person, being at the time of the commission of the alleged offence a director, manager or other officer of a company which is subsequently ordered to be wound up by the Court or subsequently passes a resolution for voluntarily winding-up—

(a) has by false pretences or by means of any other fraud induced any person to give credit to the company:
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(b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against the property of the company; or

c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against the company, he shall be guilty of a misdemeanour and shall be liable on conviction on indictment to imprisonment for a term not exceeding one year.

289. (1) If, where a company is wound up, it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding-up, every director, manager, or other officer of the company who was knowingly a party to or connived at the default of the company shall, unless he shows that he acted honestly or that in the circumstances in which the business of the company was carried on the default was excusable, be liable on conviction on indictment to imprisonment for a term not exceeding one year, or on summary conviction to imprisonment for a term not exceeding six months.

(2) For the purposes of this section, proper books of account shall be deemed not to have been kept in the case of any company if there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid, and where the trade or business has involved dealings in goods, also accounts of all goods sold and purchased, and statements of the annual stock takings.

290. (1) If in the course of the winding-up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the Court, on the application of the liquidator, or any creditor or contributory of the company, may, if it thinks proper so to do, declare that any of the directors, whether past or present, of the company who were knowingly parties to the carrying on of the business in manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Court may direct.

(2) Where the Court makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make provision for making the liability of any such director under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any company or person on his behalf, or any person claiming as assignee from or through the director, company, or person, and may from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under this subsection.
PART VI.

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For the purpose of the foregoing provision the expression "assignee" includes any person to whom or in whose favour by the directions of the director the debt, obligation, mortgage, or charge was created, issued, or transferred, or the interest created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in subsection (1) of this section, every director of the company who was knowingly a party to the carrying on of the business in manner aforesaid, shall be liable on conviction on indictment to imprisonment for a term not exceeding one year.

(4) The Court may, in the case of any person in respect of whom a declaration has been made under subsection (1) of this section or who has been convicted of an offence under subsection (3) of this section, order that that person shall not, without the leave of the Court, be a director of or in any way, whether directly or indirectly, be concerned in or take part in the management of a company for such period, not exceeding five years, from the date of the declaration or of the conviction, as the case may be, as may be specified in the order, and if any person acts in contravention of an order made under this subsection he shall be guilty of a misdemeanour.

In this subsection the expression "the Court" in relation to the making of an order, means the Court by which the declaration was made or the Court before which the person was convicted, as the case may be, and in relation to the granting of leave means any Court having jurisdiction to wind up the company.

(5) For the purposes of this section the expression "director" shall include any person who occupies the position of a director or in accordance with whose directions or instructions the directors of a company have been accustomed to act.

(6) The provisions of this section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made, and the declaration shall be deemed to be a final judgment within the meaning of paragraph (j) of section 52 of the Bankruptcy Act, 1924-1930.

(7) It shall be the duty of the liquidator to appear on the hearing of an application for leave under subsection (4) of this section, and on the hearing of an application under that subsection or under subsection (1) of this section the liquidator, may himself give evidence or call witnesses.

291. (1) If in the course of winding-up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, or liquidator, or any officer of the company has misapplied, or retained, or become liable or accountable for, any money or property of the company, or been guilty of any misfeasance or breach of trust in
relation to the company, the Court may, on the application of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator, or officer, and compel him to repay or restore the money or property, or any part thereof respectively, with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance, or breach of trust, as the Court thinks just.

(2) The provisions of this section shall apply notwithstanding that the offence is one for which the offender may be criminally liable.

292. (1) If it appears to the Court, in the course of a winding-up by or subject to the supervision of the Court, that any past or present director, manager, or other officer, or member of the company has been guilty of any offence in relation to the company for which he is criminally liable, the Court may, on the application of any person interested in the winding-up, or of its own motion, direct the liquidator to prosecute for the offence.

(2) If it appears to the liquidator in the course of a voluntary winding-up that any past or present director, manager, or other officer, or member of the company has been guilty of any offence in relation to the company for which he is criminally liable, the liquidator may, with the previous sanction of the Court, prosecute the alleged offender.

(3) All costs and expenses properly incurred by a liquidator in relation to any prosecution under subsections (1) or (2) of this section may with the sanction of the Court be paid out of the assets of the company as part of the costs of winding-up.

Supplementary Provisions as to Winding-Up.

293. (1) Except in the case of a members' voluntary winding-up, no person who at any time within the twenty-four months preceding the commencement of the winding-up has been a director, or promoter of a company, shall be eligible to be appointed, or shall act as a liquidator for the purpose of winding-up the affairs of the company, unless so determined by a resolution carried by a majority of the creditors in number and value at a meeting of which seven days' notice has been given to every creditor stating the object of the meeting: Provided that nothing in this section shall affect any appointment made before the commencement of this Act.

(2) No person shall be appointed a liquidator of a company unless he has prior to such appointment consented to act as such liquidator.

(3) A person appointed liquidator shall within five days after his appointment file a consent in writing to act as such liquidator.

(4) In the case of a voluntary winding-up the consent of the liquidator to act shall be filed with the Registrar.

(5) In the case of a compulsory winding-up or a winding-up under supervision of the Court the consent of the liquidator to act shall be filed in the Court.
294. (1) If any liquidator who has made any default in filing, delivering, or making any return, account, or other document, or in giving any notice which he is by law required to file, deliver, make, or give fails to make good the default within fourteen days after the service on him of a notice requiring him to do so, the Court may, on the application made to the Court by any contributory or creditor of the company, or by the Registrar, make an order directing the liquidator to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the liquidator.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a liquidator in respect of any default as aforesaid.

295. (1) Where a company is being wound up, whether by or under the supervision of the Court or voluntarily, every invoice, order for goods, or business letter issued by or on behalf of the company or a liquidator of the company or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

(2) If default is made in complying with this section, the company and every director, manager, or other officer of the company, and every liquidator of the company and every receiver or manager, who knowingly and wilfully authorises or permits the default shall be liable to a fine of Ten Pounds.

296. Where any company is being wound up all books and papers of the company, and of the liquidators, shall, as between the contributories of the company, be prima facie evidence of the truth of all matters purporting to be therein recorded.

297. (1) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidator shall, unless the Court otherwise orders, so soon as the liquidator does not require their further use, be deposited by him with the Registrar, who after retaining the same for three years from the date of the dissolution of the company may destroy the same.

(2) After three years from the dissolution of the company no responsibility shall rest on the company or the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of the same not being forthcoming to any person claiming to be interested therein.

298. (1) If where a company is being wound up and the winding-up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed until the winding-up is concluded, file with the Registrar a statement in the prescribed form, and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.
(2) Any person stating himself, in writing, to be a creditor or contributory of the company, shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom.

(3) If a liquidator fails to comply with the requirements of this section he shall be liable to a penalty not exceeding Twenty Pounds for each day during which the default continues, and any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of Court, and shall, on the application of the liquidator, be punishable accordingly.

299. (1) If where a company is being wound up, it appears either from any statement filed with the Registrar under the last foregoing section, or otherwise that a liquidator has in his hands or under his control any money representing unclaimed or undistributed assets of the company, which have remained unclaimed or undistributed for six months after their receipt, the liquidator shall forthwith pay the same to the Registrar, to be placed to the credit of an account to be kept by the Registrar and to be called the “Companies Liquidation Account,” and shall be entitled to the prescribed certificate of receipt for the money so paid, and that certificate shall be an effectual discharge to him in respect thereof.

(2) For the purpose of ascertaining and getting in any money payable to the Registrar in pursuance of this section, the Court may at any time order such liquidator to submit to it an account, verified by affidavit, of the sums received and paid by him as such liquidator, and may direct and enforce an audit of the account.

(3) The Registrar may invest the whole or part of the moneys standing to the credit of the said account in the purchase of Government debentures or stock, or otherwise, and may deduct a percentage of the interest arising from such investment to recoup any necessary expenses, and may pay the same into the general revenue.

(4) Any person claiming to be entitled to any money paid to the Registrar to the credit of the Companies Liquidation Account, may apply to the Registrar for payment thereof, and the Registrar may, on a certificate by the liquidator that the person is entitled or otherwise being satisfied that the claimant is so entitled make an order for the payment to that person of the sum due.

(5) Any person dissatisfied with the decision of the Registrar in respect of a claim made in pursuance of this section, may appeal to the Court.

(6) Where any unclaimed moneys paid to any claimant under subsection (4) of this section are afterwards claimed by any other person the Registrar shall not be responsible for the payment of the same, but such person may have recourse against the claimant to whom the Registrar has paid the unclaimed moneys.
PART VI.

Resolutions passed at adjourned meeting of creditors and contributories,
Imp., s. 287.

Meetings to ascertain wishes of creditors or contributories.
Imp., s. 288.
Vic., s. 217.
Tas., s. 218.
S.A., s. 153.

Special commission for receiving evidence.
Imp., s. 290.
Vic., s. 224.
Tas., s. 225.
New.

Appeal to Court against decision of liquidator.
1b., s. 184 (S.A.).
Imp., s. 192.
Vic., s. 160.
Tas., s. 161.

Power of Court to declare dissolution of company void.
Imp., s. 294.
Vic., s. 221.
New.

300. Where, after the commencement of this Act a resolution is passed at an adjourned meeting of any creditors or contributories of a company, the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

Supplementary Powers of Court.

301. (1) The Court may, as to all matters relating to the winding-up of a company, have regard to the wishes of the creditors or contributories of the company as proved to it by any sufficient evidence, and may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held, and conducted in such manner as the Court directs, and may appoint a person to act as chairman of any such meeting, and to report the result thereof to the Court.

(2) In the case of creditors regard shall be had to the value of each creditor's debt.

(3) In the case of contributories regard shall be had to the number of votes conferred on each contributory by this Act or the articles.

302. (1) The Court may appoint commissioners, either generally or for any specific matter, for the purpose of taking evidence under this Act, and the Court may refer the whole or any part of the examination of any witnesses under this Act to any person so appointed commissioner.

(2) Every commissioner shall have in the matter so referred to him all the same powers of summoning and examining witnesses, of requiring the production or delivery of documents, of certifying or punishing defaults by witnesses, and of allowing costs and charges, and expenses to witnesses as the Court has.

(3) The examination so taken shall be returned or reported to the Court in such manner as the Court directs.

(4) Unless otherwise ordered by the Court, all evidence taken by commissioners pursuant to this section shall be so taken as in open Court.

303. If any person is aggrieved by any act or decision of the liquidator of a company which is being wound up under this Act, he may apply to the Court, and the Court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

Provision as to Dissolution.

304. (1) Where a company has been dissolved, the Court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company, or by any other person who appears to the Court to be interested, make an order upon such terms as the Court thinks fit,
declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) It shall be the duty of the person upon whose application the order was made, within seven days after the making of the order, to file with the Registrar an office copy of the order, and if that person fails so to do he shall be liable to a default fine.

305. (1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, he may send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the Registrar does not, within one month of sending the letter, receive any answer thereto, he shall, within fourteen days after the expiration of the month, send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Gazette with a view to striking the name of the company off the register.

(3) If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Gazette, and send to the company by post, a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months the Registrar shall publish in the Gazette and send to the company a like notice, as is provided in the last preceding subsection.

(5) At the expiration of the time mentioned in the notice the Registrar may, unless cause to the contrary is previously shown by the company, strike its name 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:

Provided that—

(a) the liability (if any) of every director, managing 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.
PART VI.

Registrar to act as representative of defunct company in certain events.

Vic., s. 231. Tas., s. 230.

How deeds and instruments are to be executed by Registrar.

New.

(6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the Court, on the application of the company or member or creditor before the expiration of twenty years from the publication in the Gazette of the notice aforesaid, 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 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 filed with the Registrar, the company shall be deemed to have continued in existence as if its name had not been struck off; and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position, as nearly as may be, as if the name of the company had not been struck off.

(7) 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 director or officer of the company, or if there is no director or officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

306. (1) Where, after a company has been dissolved, it is proved to the satisfaction of the Registrar that the company, if still existing, would be legally or equitably bound to carry out, complete, or give effect to some dealing, transaction, or matter, and that in order to carry out, complete, or give effect to the same some purely ministerial, administrative, or mechanical act (not discretionary) should have been done by or on behalf of the company, or should be done by or on behalf of the company if still existing, including the withdrawal of a caveat, the giving or executing a discharge for a satisfied mortgage, a surrender of a lease determined otherwise than by effluxion of time, a grant or surrender of easement, a transfer or instrument under The Real Property Act, 1886, or any amendment thereof, a conveyance, assignment, receipt, or any deed or document of any description whatever where the withdrawal, giving, or executing the same would not have been a matter of option or discretion on the part of the company, it shall be lawful for the Registrar, as representing the company or its liquidator, under the provisions of this section to do or cause to be done any such act as aforesaid as he thinks the case so proved may require.

(2) The Registrar shall execute or sign any deed, instrument, or document in pursuance of the provisions of this section by signing his name in his official capacity in the place where the company would or should have executed or signed, adding a memorandum stating that he has done so in pursuance of this section; and such execution or signature shall have the same force, validity, and effect as if the company, if existing, had duly executed such deed, instrument, or document.
307. Where, after a company has been dissolved, there remain any outstanding property, real or personal, which was vested in the company or to which it was entitled, or over which it had a disposing power at the time it was so dissolved, but which was not got in, realised upon, or otherwise disposed of or dealt with by the company or its liquidator, such property, except called and uncalled capital, shall for the purposes hereinafter mentioned, notwithstanding any statute or rule of law to the contrary, by the mere operation of this section, be and become vested in the Registrar for all the estate and interest therein, legal or equitable, of the company or its liquidator at the date the company was dissolved, together with all claims, rights, and remedies which the company or its liquidator then had in respect thereof.

308. (1) Upon it being proved to the satisfaction of the Registrar that there is vested in him by operation of the last preceding section any land, messuage, tenement, or hereditament, corporeal or incorporeal, whether of freehold, leasehold, or any other tenure whatever, and whether solely or together with any other person, wherein the estate or interest of the company is a beneficial estate or interest and not merely held in trust, it shall be lawful for the Registrar to sell or otherwise dispose of or deal with the same, or with any part thereof, or with any estate or interest therein, as to the Registrar seems expedient; and thereupon or at any time thereafter it shall be lawful for the Registrar to sell or otherwise dispose of or deal with the same, either solely or in concurrence with any other person, in such manner, for such price or other consideration, valuable or otherwise, by public auction or private contract, upon such terms and conditions as the Registrar thinks fit, with power to rescind any contract entered into for that purpose, and resell or otherwise dispose of or deal with such property as he thinks expedient or the circumstances of the case require, with power, if the sale be by public auction, to fix a reserve or to sell without a reserve or to buy in, as he thinks fit. And for the purpose of effecting any such realisation, disposition, or dealing, the Registrar may make, execute, sign, and give such contracts, transfers, conveyances, assignments, receipts, discharges, deeds, and documents as he thinks necessary or proper.

(2) The moneys received by the Registrar in the exercise of any of the powers conferred on him by this Act shall in the first place be applied in defraying all costs and expenses incident thereto, and thereafter to any payment authorised by this Act, and the surplus (if any) shall be deemed to be trust moneys in his hands within the meaning and operation of section 44 of the Trustee Act, 1893, and he shall pay the same into the Court under that section, to the credit of an account entitled in the name of the company, with the word "Defunct" added thereto, and the same shall, subject to Rules of Court, be dealt with according to the orders of the Court: But any petition presented for payment out of Court of any such moneys, and any claim, suit, or action for or in respect of any such moneys, must be presented, made, or instituted within twenty years next after the dissolution of the company, after the expiration of which period of time all moneys then or at any time thereafter standing to the dit of the said account of the company shall, if there be no such
Outstanding personalty, how disposed of.

Vic., s. 234.
Tas., s. 233.
New.

Registrar to keep accounts of assets which shall be open to inspection by Auditor-General.

Vic., s. 296.
Tas., s. 234.
New.

PART VI.

The Companies Act.—1934.

petition, claim, suit, or action pending, or any order of the Supreme Court to the contrary, be passed to the credit and form part of the general revenue.

309. All personal property vested in the Registrar by operation of this Act to which the company was beneficially entitled at the date it was dissolved may be got in, sold, or otherwise disposed of or dealt with by him; and the Registrar shall, as to any such chattel, estate, or interest, and the sale or disposition thereof or dealing therewith, and the giving effect thereto, have all the discretionary and other powers which are conferred on him by the last preceding section with regard to realty; and all moneys coming to his hands in respect thereof shall be dealt with in the same way as prescribed by that section as to moneys derived from realty.

310. The Registrar shall record in the register of companies kept by him, upon the folio of the company, a statement of any property coming to his hand or under his control or to his knowledge, vested in him by operation of this Act and of his dealings therewith, and shall keep full and accurate accounts of all moneys arising therefrom and of how the same have been disposed of, and shall also keep all accounts, vouchers, receipts, and papers relating to such property and moneys respectively, and the same shall be subject to inspection by the Auditor-General, who shall have all the powers in respect of such accounts as are or may be conferred upon him by any Act relating to the collection and audit of public moneys and accounts now or hereafter in force.

PART VII.

RECEIVERS AND MANAGERS.

311. (1) A body corporate shall not be qualified for appointment as receiver of the property of a company.

(2) Nothing in this section shall disqualify a body corporate from acting as receiver as aforesaid if acting under an appointment made before the commencement of this Act, but subject as aforesaid any body corporate which acts as receiver as aforesaid shall be liable to a fine not exceeding Fifty Pounds.

(3) No person who is not an authorised auditor or liquidator shall be appointed as receiver of the property of the company unless, where the appointment is made by the Court, the Court, or in any other case, the Companies Auditors' and Liquidators' Board, is satisfied and declares that it is expedient or desirable to appoint some person other than an authorised auditor or liquidator.

(4) Any receiver or other authorised person entering into possession of any assets of a company for the purpose of enforcing any charge, whether created before or after the commencement of this Act, shall, notwithstanding any agreement to the contrary, but without prejudice to his rights against the company or any other person, be liable for debts incurred by him or the company in the course of the receivership or possession for services rendered, goods purchased, or property hired, leased, used, or occupied. In this subsection the word "charge" means charge as defined by subsection (1) of section 99:
Provided that this subsection shall not be deemed to constitute the chargee a chargee in possession.

312. Subject to the terms of any instrument giving power to any debenture holder, trustee for debenture holders, mortgagee or other person entitled to the benefit of the security thereby created or therein referred to, the Court may, on an application made by the liquidator of a company, or the receiver or manager, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver or manager of the property of a company, and may from time to time, on an application made either by the liquidator or by the receiver or manager, vary or amend any order so made.

313. (1) Every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument or by the Court shall, within one month, or such longer period as the Registrar may allow, 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, file with the Registrar an abstract in the prescribed form showing his receipts and his payments during that period of six months, or, where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing, and the aggregate amount of his receipts, and of his payments during all preceding periods since his appointment.

(2) Every receiver or manager who makes default in complying with the provisions of this section shall be liable to a default fine.

(3) The Registrar may cause the account to be audited by an authorised auditor, and for the purpose of the audit the liquidator shall furnish the auditor with such vouchers and information as he may require, and the auditor may at any time require the production of and inspect any books or accounts kept by the liquidator.

314. (1) If—

(a) any receiver of the property of a company, who has made default in filing, delivering, or making any return, account, or other document, or in giving any notice, which a receiver is by law required to file, deliver, make, or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so; or

(b) any receiver or manager of the property of a company who has been appointed under the powers contained in any instrument, has, after being required at any time by the liquidator of the company so to do, failed to render proper accounts of his receipts and payments, and to pay over to the liquidator the amount properly payable to him,

the Court may, on an application made for the purpose, make an order directing the receiver or manager, as the case may be, to make good the default within such time as may be specified in the order.
PART VII.

(2) In the case of any such default as is mentioned in paragraph (a) of the last preceding subsection an application for the purposes of this section may be made by any member or creditor of the company or by the Registrar, and the order may provide that all costs of and incidental to the application shall be borne by the receiver, and in the case of any such default as is mentioned in paragraph (b) of that subsection the application shall be made by the liquidator.

(3) Nothing in this section shall be taken to prejudice the operation of any enactments imposing penalties on receivers in respect of such default as is mentioned in paragraph (a) of subsection (1) of this section.

PART VIII.

REGISTRAR'S OFFICE AND ADMINISTRATION.

315. (1) The Governor may appoint a fit and proper person to be Registrar of Companies for the purpose of this Act; and until such appointment shall be made, the Registrar appointed under the Companies Act, 1892, shall be the Registrar. The Governor may also appoint a Deputy Registrar of Companies.

(2) The Registrar of Companies shall have a seal, and such seal shall bear the words "Registrar of Companies, South Australia."

(3) Any documents required for or connected with the registration of companies by this Act may be authenticated by the seal of the Registrar.

316. (1) Any person may inspect the documents kept by the Registrar relating to companies under this Act on payment of such fees as may be prescribed; and any person may require a certificate of the incorporation of any company or other certificate issued under this Act or a copy or extract of any other document or any part of any other document to be certified by the Registrar on payment for the certificate, certified copy, or extract of such fees as may be prescribed.

(2) A copy of or extract from any document kept, recorded, filed, or registered at the office of the Registrar, certified to be a true copy under the hand and seal of the Registrar, shall in all legal proceedings be admissible in evidence as of equal validity with the original document.

317. There shall be paid to the Registrar in respect of the several matters mentioned in the Thirteenth Schedule to this Act the several fees therein specified, or such fees as the Governor may by regulation from time to time direct.

318. (1) The Registrar shall take all practical steps to see that every company complies with the provisions of this Act so far as a company is required to keep any books, registers or records or do any thing and for that purpose may appoint inspectors or other officers or agents.

(2) The Registrar and every person executing any power or duty conferred or imposed on the Registrar and any inspector, officer, or
other agent of the Registrar appointed under or by virtue of this Act or the regulations shall, before entering upon his duties or exercising any power under this Act, make a declaration in the form prescribed.

(3) Any person who acts in the execution of any duty under or by virtue of this Act or the regulations before he has made the prescribed declaration, or who after making the declaration makes a record of or divulges any information relating to the affairs of a company or person except in the performance of any duty under this Act, shall be guilty of an offence.

319. (1) The Registrar or any inspector, officer, or agent duly authorised by the Registrar may require a company or any director, manager, or other officer thereof to produce for his inspection the registers of members and mortgages and the minute book of general meetings required by this Act to be kept by the company for the purpose only of ascertaining whether or not the requirements of this Act have been complied with.

(2) If any company, director, manager, or other officer, refuses or neglects to produce for the inspection of the Registrar, inspector, or agent any minute book or register of members or mortgages, or obstructs or hinders the Registrar, inspector, or agent in the execution of his duty the company and every officer of the company who is in default shall be liable to a fine not exceeding Fifty Pounds.

320. (1) If a company, having made default in complying with any provision of this Act which requires it to file with, deliver or send to the Registrar any return, account or other document, or to give notice to him of any matter, fails to make good the default within fourteen days after the service of a notice on the company requiring it to do so, the Court may, on an application made to the Court by any member or creditor of the company or by the Registrar make an order directing the company and any officer thereof to make good the default within such time as may be specified in the order.

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

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or its officers in respect of any such default as aforesaid.

321. (1) The Registrar shall not accept for filing or registration any memorandum or articles of a company or document affecting the memorandum or articles (other than an order of the Court) or other document or agreement (other than a prospectus) relating or incidental to the registration or incorporation of a company under this Act, including a company required to be registered under Part XII., unless such document bears a certificate in the form in the Tenth Schedule of this Act signed by a solicitor or by a person named in the articles as a director of the company where the certificate contains a statement that no person has given advice in respect of, or prepared the document for or in expectation of fee or reward.
(2) Any person who gives a certificate to be used under subsection (1) hereof, knowing the same to be false, shall be liable to a fine not exceeding fifty pounds.

322. The Registrar shall not register any company whether the registration has been applied for before or after the commencement of this Act, if any of the objects of the company is to do any act outside the State or to carry on any business outside the State, which act or business would if done or carried on within the State be illegal.

323. (1) The Registrar may apply to the Court for the winding-up of a company in the same manner as any creditor may apply under Part VI. of this Act for the winding-up of a company—

(a) where a company formed for any illegal object has been registered under the provisions of this Act;

(b) where a company formed for any legal object is carrying on any illegal business or object.

(2) The provisions of Part VI. of this Act in so far as it provides for a winding-up by the Court, shall apply to any application by the Registrar under this section.

324. (1) If any person is aggrieved by any act or decision of the Registrar he may apply to the Court, and the Court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

(2) Any application under this section shall be dealt with by way of re-hearing, and the Court shall not be limited to the facts which were before the Registrar.

(3) This section shall not apply to any act or decision of the Registrar by this Act declared to be conclusive or final.

PART IX.

APPLICATION OF ACT TO COMPANIES FORMED AND REGISTERED UNDER FORMER COMPANIES ACTS.

325. In the application of this Act to existing companies it shall apply in the same manner—

I. in the case of a limited company other than a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by shares;

II. in the case of a no-liability company as if it had been formed and registered under this Act as a no-liability company;

III. in the case of a company limited by guarantee, as if the company had been formed and registered under this Act as a company limited by guarantee; and

IV. in the case of any other company, as if the company had been formed and registered under this Act as an unlimited company:
Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Companies Act, 1892, or other Act under which the company was registered as the case may be.

326. This Act shall apply to every company registered, but not formed under the Companies Acts, in the same manner as it is in Part X. of this Act declared to apply to companies registered but not formed under this Act:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the Companies Acts.

327. A company registered but not formed under the Companies Acts may cause its shares to be transferred in manner in use before the commencement of this Act or in such other manner as the company may direct.

PART X.

COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT.

328. (1) With the exceptions and subject to the provisions contained in this section—

(a) Any company consisting of five or more members which was in existence on the seventeenth day of December, one thousand eight hundred and ninety-two; and

(b) Any company formed after the date aforesaid, whether before or after the commencement of this Act, in pursuance of any Act of Parliament other than this Act or of letters patent, or being otherwise duly constituted according to law, and consisting of five or more members—

may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee; and the registration shall not be invalid by reason that it has taken place with a view to the company being wound up:

Provided that—

I. a company having the liability of its members limited by Act of Parliament or letters patent and not being a joint stock company as hereinafter defined, shall not register in pursuance of this section;

II. a company having the liability of its members limited by Act of Parliament or letters patent, shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee;

III. a company that is not a joint stock company as hereinafter defined shall not register in pursuance of this section as a company limited by shares:
iv. a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person or by proxy (in cases where proxies are allowed by the regulations of the company) at a general meeting summoned for the purpose:

v. where a company not having the liability of its members limited by Act of Parliament or letters patent is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person or by proxy at the meeting:

vi. where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company in the event of it being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceased to be a member, and of the cost and expenses of winding-up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding a specified amount.

(2) In computing any majority under this section when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the articles of the company.

329. For the purposes of this Part of this Act, as far as relates to registration of companies as companies limited by shares, a joint stock company means a company having a permanent paid-up or nominal share capital of fixed amount divided into shares also of fixed amount or held and transferable as stock, or divided and held partly in one way and partly in the other and formed on the principle of having for its members the holders of those shares or that stock and no other persons, and such a company, when registered with limited liability under this Act, shall be deemed to be a company limited by shares.

330. Before the registration in pursuance of this Part of this Act of a joint stock company, there shall be delivered to the Registrar the following documents:

1. A list showing the names, addresses, and occupations of all persons who on a day named in the list, not being more than six clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing in cases where the shares are numbered each share by its number;

2. A copy of any Act of Parliament, Royal Charter, letters patent, deed of settlement, contract of co-partnership, or other instrument constituting or regulating the company; and
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331. Before the registration in pursuance of this Part of this Act of any company not being a joint stock company, there shall be delivered to the Registrar—

1. a list showing the names, addresses, and occupations of the directors or other managers (if any) of the company; and

2. a copy of any Act of Parliament, letters patent, deed of settlement, contract of co-partnership, or other instrument constituting or regulating the company; and

3. in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

332. The lists of members and directors, and any other particulars relating to the company required to be delivered to the Registrar, shall be verified by a statutory declaration of any two or more directors, or other principal officers of the company.

333. The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is, or is not, a joint stock company as hereinbefore defined.

334. No fees shall be charged in respect of the registration in pursuance of this Part of this Act of a company if it is not registered as a limited company, or if before its registration as a limited company the liability of the shareholders was limited by some other Act of the Parliament of South Australia or by letters patent.

335. When a company registers in pursuance of this Part of this Act with limited liability, the word "limited" shall form and be registered as part of its name.
PART X.

Certificate of registration.
Imp., s. 329.
Vic., s. 253.
Tas., s. 249.
S.A., s. 90.
S.A., s. 90.

Certificate to be evidence of compliance with Act.
S.A., s. 91.

Vesting of property on registration.
Imp., s. 320.
Vic., s. 254.
Tas., s. 250.
S.A., s. 92.

Saving for existing liabilities.
Imp., s. 331.
Vic., s. 255.
Tas., s. 251.
S.A., s. 93.

Continuation of existing actions.
Imp., s. 332.
Vic., s. 256.
Tas., s. 252.
S.A., s. 94.

Effect of registration under Act.
Imp., s. 333.
Vic., s. 257.
Tas., s. 253.
S.A., s. 95.

336. On compliance with the requirements of this Part of this Act with respect to registration, and on payment of such fees, if any, as are prescribed, the Registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited, and thereupon the company shall be so incorporated and the Registrar shall give notice of the issue of such certificate in the Gazette.

337. Such certificate, or the notification in the Gazette, shall be conclusive evidence that all the requisitions herein contained in respect of registration under this Act have been complied with, and that the company is authorised to be registered under this Act as a limited, or unlimited company, or a company limited by guarantee, as the case may be, and the date of incorporation mentioned in such certificate shall be deemed to be the date at which the company is incorporated under this Act.

338. All property, real and personal (including things in action), belonging to or vested in a company at the date of its registration in pursuance of this Part of this Act shall on registration pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein without further transfer, assignment, or assurance.

339. Registration of a company in pursuance of this Part of this Act shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred or any contract entered into by, to, with, or on behalf of the company before registration.

340. All actions, and other legal proceedings which at the time of the registration of a company in pursuance of this Part of this Act are pending by or against the company or the public officer or any member thereof may be continued in the same manner as if the registration had not taken place:

Provided that execution shall not issue against the effects of any individual member of the company on any judgment, decree, or order obtained in any such action or proceeding; but in the event of the property and effects of the company being insufficient to satisfy the judgment, decree, or order, an order may be obtained for winding-up the company.

341. (1) When a company is registered in pursuance of this Part of this Act the following provisions of this section shall have effect.

(2) All provisions contained in any Act of Parliament, deed of settlement, contract of co-partnery, letters patent, or other instrument constituting or regulating the company, including in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum were contained in a registered memorandum and the residue thereof were contained in registered articles:
Provided that where any Act of Parliament, deed of settlement, contract of co-partnership, letters patent or other instrument constituting or regulating the company negatives or restricts any of the implied powers contained in the Second Schedule to this Act the company may at the general meeting referred to in subdivision iv. of the proviso to subsection (1) of section 328 of this Act or any adjournment of such meeting by resolution, of which notice has been given, assented to by not less than three-fourths of the members present in person or by proxy annul or vary the provision negating or restricting such implied power.

(3) All the provisions of this Act shall apply to the company and the members, contributories, and creditors thereof in the same manner in all respects as if it had been formed under this Act subject as follows, that is to say:

(a) The regulations in Table A in the First Schedule to this Act shall not apply unless adopted by special resolution;

(b) The provisions of this Act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered;

(c) Subject to the provisions of this section the company shall not have power to alter any provision contained in any Act of Parliament relating to the company;

(d) Subject to the provisions of this section the company shall not have power without the sanction of the Governor to alter any provision contained in any letters patent relating to the company;

(e) The company shall not have power to alter any provision contained in a royal charter or letters patent with respect to the objects of the company;

(f) In the event of the company being wound up every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability; or to pay or contribute to the payment of the costs and expenses of winding-up the company, so far as relates to such debts or liabilities as aforesaid:

(g) In the event of the company being wound up every contributory shall be liable to contribute to the assets of the company in the course of the winding-up all sums due from him in respect of any such liability as aforesaid; and in the event of the death, bankruptcy, or insolvency of any contributory or marriage of any female contributory, the provisions of this Act with respect to the
representatives of deceased contributories, and to the assignees and trustees of bankrupt or insolvent contributories and the consequences of the marriage of female contributories, respectively shall apply.

(4) The provisions of this Act with respect to—

(a) the registration of an unlimited company as limited:

(b) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital, and to provide that a portion of its share capital, shall not be capable of being called up except in the event of winding-up:

(c) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding-up,

shall apply notwithstanding any provisions contained in any Act of Parliament, royal charter, deed of settlement, contract of co-partnership, letters patent, or other instrument constituting or regulating the company.

(5) Except as provided in subsection (2) of this section nothing in this section shall authorise the company to alter any such provisions contained in any deed of settlement, contract of co-partnership, letters patent, or other instrument constituting or regulating the company as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act.

(6) Nothing in this Act shall derogate from any power of altering its constitution or regulations which may by virtue of any Act of Parliament, deed of settlement, contract of co-partnership, letters patent, or other instrument constituting or regulating the company be vested in the company.

342. (1) Subject to the provisions of this section a company registered in pursuance of this Part of this Act may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.

(2) The provisions of this Act with respect to confirmation by the Court and registration of an alteration of the objects of a company, shall, so far as applicable, apply to an alteration under this section with the following modifications:—

(a) There shall be substituted for the copy of the altered memorandum required to be filed with the Registrar a copy of the substituted memorandum and articles; and

(b) On the registration of the alteration being certified by the Registrar, the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum and those articles, and the company’s deed of settlement shall cease to apply to the company.
(3) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act.

(4) In this section the expression “deed of settlement” includes any contract of co-partnery or other instrument constituting or regulating the company, not being an Act of Parliament, royal charter, or letters patent.

343. The provisions of this Act with respect to staying and restraining actions, and proceedings against a company at any time after the presentation of a petition for winding-up, and before the making of a winding-up order, shall, in the case of a company registered in pursuance of this Part of this Act, where the application to stay or restrain is by a creditor, extend to actions, and proceedings against any contributory of the company.

344. Where an order has been made for winding-up a company registered in pursuance of this Part of this Act, no action or proceeding shall be commenced or proceeded with against the company or any contributory of the company, in respect of any debt of the company, except by leave of the Court and subject to such terms as the Court may impose.

PART XI.

WINDING-UP OF UNREGISTERED COMPANIES.

345. For the purposes of this Part of this Act the expression “unregistered company” shall not include a company registered under this Act, but save as aforesaid shall include any partnership, society, association, or company consisting of more than five members.

346. (1) Subject to the provisions of this Part of this Act any unregistered company may be wound up under this Act, and all the provisions of this Act with respect to winding-up shall apply to an unregistered company, with the following exceptions and additions:

I. The principal place of business of such company in this State shall, for all the purposes of the winding-up, be deemed to be the registered office of the company:

II. No unregistered company shall be wound up under this Act voluntarily or subject to supervision:

III. The circumstances in which an unregistered company may be wound up are as follows:

(a) if the company is dissolved or has ceased to carry on business, or is carrying on business only for the purpose of winding-up its affairs:
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(b) if the company is unable to pay its debts:

(c) when the company, by reason of being unable to enforce contribution of capital from its members, or by reason of insufficient capital, or for any other reason, is unable satisfactorily to continue its business:

(d) if the Court is of opinion that it is just and equitable that the company should be wound up:

iv. An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts—

(a) if a creditor by assignment or otherwise, to whom the company is indebted in a sum exceeding Twenty-five Pounds then due has served on the company, by leaving at its principal place of business in this State, or by delivering to the secretary or some director, manager, or principal officer of the company, or by otherwise serving in such manner as the Court may approve or direct, a demand under his hand, requiring the company to pay the sum so due, and the company has for three weeks after the service of the demand neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor:

(b) if any action, or other proceeding has been instituted against any member for any debt or demand due or claimed to be due from the company, or from him in his character of member, and notice in writing of the institution of the action or proceeding having been served on the company by leaving the same at its principal place of business, or by delivering it to the secretary or some director, manager, or principal officer of the company, or by otherwise serving the same in such manner as the Court may approve or direct, the company has not within ten days after service of the notice paid, secured or compounded for the debt or demand, or procured the action or proceeding to be stayed or indemnified the defendant to his reasonable satisfaction against the action or proceeding, and against all costs, damages, and expenses to be incurred by him by reason of the same:

(c) if execution or other process issued on a judgment, decree, or order obtained in any Court in favor of a creditor against the company or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied:
(d) if it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

(2) Nothing in this Part of this Act shall affect the operation of any enactment which provides for any partnership, association, or company being wound up, or being wound up as a company or as an unregistered company under any enactment repealed by this Act, except that references in any such first-mentioned enactment to any such repealed enactment shall be read as references to the corresponding provision (if any) of this Act.

(3) A friendly society which is subject to the Friendly Societies Act, 1919, shall not be wound up under this Act as an unregistered company except upon the application of a creditor.

347. (1) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves or to pay or contribute to the payment of the costs and expenses of winding-up the company; and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid.

(2) In the event of the death, bankruptcy, or insolvency of any contributory, or marriage of any female contributory, the provisions of this Act with respect to the representatives of deceased contributors, and to the trustees of bankrupt or insolvent contributors, and to the consequences of the marriage of a female contributory respectively shall apply.

348. The provisions of this Act with respect to staying and restraining actions, and proceedings against a company at any time after the presentation of a petition for winding-up, and before the making of a winding-up order, shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to actions, and proceedings against any contributory of the company.

349. Where an order has been made for winding-up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the Court and subject to such terms as the Court may impose.

350. The provisions of this Part of this Act with respect to unregistered companies shall be in addition to, and not in restriction of, any provisions hereinbefore in this Act contained with respect to winding-up companies by the Court, and the Court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding-up companies formed and registered under this Act:

Provided that an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part of this Act.
PART XII.

COMPANIES ESTABLISHED OUTSIDE SOUTH AUSTRALIA.

351. (1) In this Part the word "company" includes society or other incorporated body.

(2) This Part of this Act shall apply to all companies incorporated outside this State which after the commencement of this Act commence to carry on business within this State, and to all companies incorporated outside this State which have before the commencement of this Act commenced to carry on or carried on business within this State and continue to carry on business within this State at the commencement of this Act.

352. (1) Every company to which this Part applies shall within one month from the date of commencement to carry on business, or in the case of companies carrying on business in South Australia at the time of commencement of this Act within the times provided in this section, register under this Part and file with the Registrar for registration:

(a) A certified copy of the certificate of incorporation of the company or a document of similar effect:

(b) A certified copy of the charter, statute, or memorandum and articles of the company or other instrument constituting or defining the constitution of the company, and if the instrument is not written in the English language a certified translation thereof:

(c) A list of the directors of the company in the State or country in which it is incorporated, and of the directors in this State, if any, containing such particulars with respect to the directors as are by this Act required to be contained with respect to directors in the register of the directors of the company. Where there are directors in this State a memorandum shall be attached to the said list stating the powers of the local directors:

(d) A memorandum of appointment under the seal of the company or executed 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 some one or more persons resident in this State authorised to accept on behalf of the company service of process and any notices required to be served on the company, which person shall be deemed to be the agent of such company for the purposes of this Act. The memorandum of appointment required by this paragraph may be by power of attorney. Where the appointment is made by some person duly authorised in manner aforesaid in that behalf by the company an original copy of the deed granting such power or authority shall be produced to the Registrar, who shall retain the same or a copy thereof certified under the hand and seal of the Registrar to be a true copy, and such copy shall for all purposes be deemed to be an original:
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353. (1) Every company to which this Part applies shall, before commencing to carry on business in this State, have a registered office in this State.

(2) The office shall be accessible to the public for not less than three hours between the hours of eight o’clock in the morning and ten o’clock in the evening each day for at least five days each week.

(3) All communications and notices to the company may be addressed to the company at its registered office.
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(4) Notice of the situation of the registered office and the days and hours during which it is accessible to the public and of any change therein shall be filed with the Registrar before commencement of business, or within ten days after the change, as the case may be, who shall record the same, and shall be advertised in the Gazette and one daily newspaper published in Adelaide.

354. (1) On the registration of a company under this Part the Registrar shall certify accordingly under his hand and seal in Form B of the Eleventh Schedule to this Act.

(2) A certificate of registration shall be issued to a company registered under Part VIII. of The Companies Act, 1892, on the filing of the documents required to be filed by subsection (2) of section 352, and payment of the prescribed fees in respect of each such document.

(3) A certificate under subsection (1) of this section or a copy thereof certified under the hand and seal of the Registrar shall be prima facie evidence in all legal proceedings that such company is formed or incorporated and is duly registered under this Part, that the person therein named as agent is the agent of such company in this State, and that the address of such agent in this State is situate as therein stated, and of all other particulars mentioned in such certificate.

355. A company formed and incorporated in the United Kingdom or in a British possession, which has duly registered under this Part, shall have the same power to hold lands in this State as if it were a company incorporated under this Act.

356. Any process or notice required to be served on the company registered under this Part shall be sufficiently served—

(a) if addressed to the company and left at, or sent by post in a prepaid registered letter to the registered office of the company; or

(b) if addressed to any person whose name has been filed under section 352 of this Act as agent of the company and left at or sent by post in a prepaid registered letter to his registered address:

Provided that this section shall not derogate from the effect of any statute or rule now or hereafter in force regulating the service of legal process upon any person or corporate body according to the practice of the Court whence such process shall issue, but shall be deemed to be cumulative upon and in addition to any such statute or rule, nor shall this section affect the power of any Court to direct what service of its process shall be effective as regards any company or corporation.

357. (1) No company shall be deemed to carry on business in this State within the meaning of this Part by reason only of its investing its funds or other property in this State.
(2) A trustee and executor company formed or incorporated outside this State, which does not carry on any business in this State, other than the administration, management, or realisation of—

(a) the assets in this State of persons in respect of whose wills or estates probate or letters of administration has or have been sealed in this State under the Administration and Probate Act, 1919; or

(b) property in this State forming part of that comprised in any settlement or deed of trust executed in any place outside this State, and which settlement or deed of trust includes property outside this State as well as property in this State—

shall not be required to comply with any of the provisions of this Part, and every such company shall have the same power to hold lands in this State as if it were a company incorporated under this Act.

358. (1) Every company to which this Part of this Act applies shall, at least once in every year, and at intervals of not more than fifteen months, file with the Registrar a true copy, signed by the agent, of the last general balance-sheet of the company prepared prior to such filing, and post up, and keep posted up until the filing of a true copy of the next following balance-sheet, in a conspicuous place at the registered office of the company, another true copy of such balance-sheet signed as aforesaid.

(2) Such balance-sheet shall be in such form and contain such particulars and include such documents as the company is required to make out and lay before the company in general meeting by the law for the time being applicable to such company in the country or State where it was incorporated, and shall be accompanied by a Statutory Declaration in a form prescribed by regulations that such law has been complied with: Provided that the Registrar may, in any case in which he thinks proper, require the balance-sheet to be in such form and to contain such particulars and to include documents of such a nature as the Registrar requires by notice in writing to the company, but this proviso shall not authorise the Registrar to require a balance-sheet to contain any particulars or include any documents other than are required in the balance-sheet of any class of public company under Part IV. of this Act.

(3) If any such balance-sheet is not written in the English language, there shall be annexed to it a certified translation thereof.

(4) This section shall not apply to any private or proprietary company, which by the law in force in the country or State where it was incorporated is not required to publish its balance-sheet.

359. If in the case of any company to which this Part of this Act applies any alteration is made in—

I. the charter, statutes, or memorandum and articles of the company or any such instrument as aforesaid; or

II. the directors of the company, or the particulars contained in the list of the directors; or
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III. the names or addresses of the persons authorised to accept service on behalf of the company; or

IV. the situation of its registered office, or the hours when such office is accessible to the public,

the company shall, within the prescribed time, file with the Registrar a return containing the prescribed particulars of the alteration.

360. Every company to which this Part of this Act applies shall—

I. in every prospectus inviting subscriptions for its shares or debentures in this State state the country in which the company is incorporated; and

II. conspicuously exhibit on every place where it carries on business in this State the name of the company and the country in which the company is incorporated; and

III. cause the name of the company and of the country in which the company is incorporated—

(a) to be affixed on every place where it carries on business; and

(b) to be stated in legible characters in all bill-heads and letter paper and in all notices, advertisements, and other official publications of the company; and

IV. if the liability of the members of the company is limited, cause notice of that fact—

(a) to be stated in legible characters in every such prospectus as aforesaid, and in all bill-heads, letter paper, notices, advertisements, and other official publications of the company in this State; and

(b) to be affixed on every place where it carries on its business:

Provided that in the case of a company to which section 358 of this Act applies it shall be sufficient compliance with the provisions of paragraphs III. (b) and IV. (a) if such company duly complies with the provisions of that section.

361. (1) Before any company registered under this Part shall voluntarily cease to carry on business in this State it shall give at least three months' notice of its intention so to do.

Such notice shall be filed with the Registrar and advertised in the Government Gazette and in one South Australian daily newspaper circulating in Adelaide.

(2) Upon being satisfied that three months have expired since the filing and the last publication of the notice referred to in subsection (1) of this section the Registrar shall remove the name of the company from the register.
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362. Notwithstanding anything to the contrary in this Act contained, a company to which this Part applies may be wound up under this Act in the same way as if it were an unregistered company within the meaning of Part XI., and all the provisions of that part with reference to the winding-up of unregistered companies shall, so far as applicable, apply to and in the winding-up of any such company as is first hereinbefore mentioned: Provided, however, that it shall not be necessary in any proceedings for, or in relation to, such winding-up as last aforesaid, to allege or prove that the company consists of more than five members.

363. (1) If any company to which this Part applies shall carry on business contrary to this Part of this Act the validity of any contracts, dealings, or transactions in relation to such business shall not be affected by this Part of this Act, but such company shall not be entitled to bring or maintain any action, set-off, counter-claim, or legal proceeding in respect of any such contract, dealing, or transaction until it shall have complied with this Part of this Act.

(2) If any company to which this Part applies fails to comply with any of the requirements of this Part, the company, the agent, and every officer of the company who is in default shall be liable to a penalty not exceeding Twenty Pounds, or in the case of a continuing offence Two Pounds for every day during which the default continues.

364. For the purposes of this Part—

the expression "certified" means certified in the prescribed manner to be a true copy or a correct translation:

the expression "carries on business" includes establishing or using a share transfer or share registration office; and "to carry on business" has a corresponding meaning:

the expression "prospectus" means any prospectus, notice, circular, advertisement, or other invitation offering to the public for subscription or purchase any shares or debentures of the company:

the expression "company" extends to and includes any unincorporated body or association of persons which may sue or be sued, or hold property in the name of the secretary or other officer of the body or association duly appointed for that purpose, and which shall not have its head office or place of business in this State.
PART XIII.

RESTRICTIONS ON OFFERING SHARES.

365. In this Part, unless the context otherwise indicates or requires—

"Company" includes any company, association, society, or partnership consisting of more than five members, and whether registered under this Act or not, but does not include an industrial and provident society registered under the Industrial and Provident Societies Act, 1923, nor a building society registered under the Building Societies Act, 1881:

"House" does not include an office used for business purposes:

"Shares" means the shares of a company, whether a company within the meaning of this Act or not, and includes stock, bonds, debentures, debenture stock, and other securities and units, whether having the benefit of security over the assets of the company or not:

"Unit" means any right or interest by whatever name called in a share:

"Dividends" includes interest.

366. (1) It shall not be lawful for any person—

(a) to issue, advertise, circulate, or distribute in South Australia any prospectus offering for subscription shares in a company incorporated or to be incorporated outside South Australia, whether the company has or has not established, or when formed will or will not establish, a place of business in South Australia, unless—

(i) before the issue, advertisement, circulation, or distribution of the prospectus in South Australia a copy thereof, certified by the chairman and two other directors of the company as having been approved by resolution of the managing body, has been filed with the Registrar;

(ii) the prospectus states on the face of it that the copy has been so filed;

(iii) the prospectus is dated;

(iv) the prospectus otherwise complies with this Part of this Act; or

(b) to issue to any person in South Australia a form of application for shares in such a company or intended company as aforesaid unless the form is issued with a prospectus which complies with this Part of this Act:

Provided that this provision shall not apply if it is shown that the form of application was issued in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares.

(2) This section shall not apply to the issue to existing members of a company of a prospectus or form of application relating to shares in the company, whether an applicant for shares will or will not have the right to renounce in favour of other persons, or to the issue to existing members of a company which is
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being liquidated for the purpose of reconstruction of a prospectus or form of application relating to shares in a company formed to acquire all or any of the assets of the said company being liquidated, but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

(3) Where any document by which any shares in a company incorporated outside South Australia are offered for sale to the public would, if the company concerned had been a company within the meaning of this Act, have been deemed by virtue of section 54 of this Act to be a prospectus issued by the company, that document shall be deemed to be, for the purposes of this section, a prospectus issued by the company.

(4) An offer of shares for subscription or sale to any person whose ordinary business or part of whose ordinary business it is to buy or sell shares, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this section.

(5) Section 53 of this Act shall extend to every prospectus to which this section applies.

(6) Any person who is knowingly responsible for the issue, circulation, or distribution of any prospectus or for the issue of a form of application for shares in contravention of the provisions of this section shall be liable to a fine not exceeding One Hundred Pounds.

367. (1) In order to comply with this Part of this Act a prospectus in complying with the provisions of subparagraphs (ii.) and (iii.) of paragraph (a) of subsection (1) of the last foregoing section must—

(a) Contain particulars with respect to the following matters:—

(i.) The objects of the company:

(ii.) The instrument constituting or defining the constitution of the company:

(iii.) The enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected:

(iv.) An address in South Australia where the said instrument, enactments, or provisions, or copies thereof, and if the same are in a foreign language a translation thereof certified in the prescribed manner, can be inspected:

(v.) The date on which and the country in which the company was incorporated:

(vi.) Whether the company has established a place of business in South Australia, and, if so, the address of its principal office in South Australia:

Provided that the provisions of subparagraphs (i.), (ii.), (iii.), and (iv.) of this paragraph shall not apply in the case of a prospectus issued more than two years after the date on which the company is entitled to commence business;
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Subject to the provisions of this section state the matters specified in Part A of section 50 of this Act, other than those specified in paragraph (a) of this subsection and set out the reports specified in Part B of section 50 of this Act, subject always to the provision contained in Part C of the said section:

Provided that—

(i) where any prospectus to which this section applies is published as a newspaper advertisement, it shall be a sufficient compliance with the requirement that the prospectus must specify the objects of the company if the advertisement specifies the primary object with which the company was formed; and

(ii) in paragraph (3) of Part A of section 50 a reference to the constitution of the company shall be substituted for the reference to the articles; and

(iii) paragraph (1) of Part C of the said section shall have effect as if the reference to the memorandum were omitted therefrom.

(2) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(3) In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—

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

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

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

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters contained in paragraph (15) of Part A of section 50 of this Act, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(4) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act, apart from this section.

368. (1) It shall not be lawful for any person to go from house to house offering to any member of the public shares for subscription or purchase.

(2) Subject as hereinafter provided in this subsection, it shall not be lawful to make an offer in writing to any member of the public
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(not being a person whose ordinary business or part of whose ordinary business it is to buy or sell shares, whether as principal or agent) of any shares for purchase unless the offer is accompanied by a statement in writing (which must be signed by the person making the offer and dated) containing such particulars as are required by this section to be included therein and otherwise complying with the requirements of this section, or, in the case of shares in a company incorporated outside South Australia, either by such a statement as aforesaid, or by such a prospectus as complies with this Part of this Act: Provided that the provisions of this subsection shall not apply—

(a) where the shares to which the offer relates are shares which are quoted on, or in respect of which permission to deal has been granted by any recognised stock exchange in South Australia, and the offer so states and specifies the stock exchange; or

(b) where the shares to which the offer relates are shares which a company has allotted or agreed to allot with a view to their being offered for sale to the public; or

(c) where the offer was made only to persons with whom the person making the offer has been in the habit of doing regular business in the purchase or sale of shares.

(3) The written statement aforesaid shall not contain any matter other than the particulars required by this section to be included therein, and shall not be in characters less large or less legible than any characters used in the offer or in any document sent therewith.

(4) The said statement shall contain particulars with respect to the following matters:

(a) whether the person making the offer is acting as principal or agent, and if as agent the name of his principal and an address in South Australia where that principal can be served with process:

(b) the date on which and the country in which the company was incorporated, and the address of its registered or principal office in South Australia:

(c) the authorised share capital of the company and the amount thereof which has been issued, the classes into which it is divided and the rights of each class of shareholders, stockholders, bondholders, or debenture-holders in respect of capital, dividends, and voting:

(d) the dividends (if any) paid by the company on each class of shares during each of the three financial years immediately preceding the offer, and if no dividend has been paid in respect of shares of any particular class during any of those years, a statement to that effect:
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(e) the total amount of any debentures, stock, or bonds issued by the company and outstanding at the date of the statement, together with the rate of interest payable thereon;

(f) the names and addresses of the directors of the company and of any person occupying the position of director of the company;

(g) whether or not the shares offered are fully paid up, and, if not, to what extent they are paid up:

(h) whether or not the shares are quoted on, or permission to deal therein has been granted by any recognised stock exchange in South Australia or elsewhere, and, if so, which, and, if not, a statement that they are not so quoted, or that no such permission has been granted:

(i) where the offer relates to units, particulars of the name and addresses of the persons in whom the shares represented by the units are vested, the date of and the parties to any document defining the terms on which those shares are held, and an address in South Australia where that document or a copy thereof can be inspected.

In this subsection the expression "company" means the company by which the shares to which the statement relates were or are to be issued.

(5) If any person knowingly acts, or incites, causes, or procures any person to act, in contravention of this section, he shall be liable to a fine not exceeding One Hundred Pounds, and in the case of a second or subsequent offence to imprisonment for a term not exceeding twelve months or to a fine not exceeding One Hundred Pounds, or to both such imprisonment and fine.

(6) Where a person convicted of an offence under this section is a company (whether a company within the meaning of this Act or not), every director and every officer concerned in the management of the company shall be guilty of the like offence unless he proves that the act constituting the offence took place without his knowledge or consent.

(7) For the purposes of this section a person shall not in relation to a company be regarded as not being a member of the public by reason only that he is a holder of shares in the company or a purchaser of goods from the company.

(8) Where any person makes an offer in contravention of the provisions of this section, any person contracting to take shares in consequence of such offer shall be in the same position as if such contract had been induced by the fraud of such person, and the Court or any Court before which he is convicted of having made an offer in contravention of this section may order that any contract made as a result of the offer shall be void, and, where it makes any such order, may give such consequential directions as it thinks proper for the repayment of any money or the transfer of any shares.

Where a Court makes an order under this subsection (whether with or without consequential directions) an appeal against the order and the consequential directions, if any, shall lie to the Court.
369. (1) No person shall, whether as principal or agent, sell or offer, or agree to sell or attempt to sell any shares in any company, whether formed or to be formed within or outside the State, if any of the objects of the company is to do any act in or outside the State, or to carry on business in or outside the State, which act or business would, if done or carried on within the State, be illegal.

(2) In any proceedings for an offence against this section a document purporting to be a memorandum or proposed memorandum of association of a company shall on mere production be deemed prima facie evidence of the existence of the company, or proposal to form the company as the case may be, of the contents of its memorandum of association, and of the fact that its objects are those stated in the said memorandum.

PART XIV.

MISCELLANEOUS.

Auditors' and Liquidators' Board.

370. (1) The Governor shall appoint a Board of three persons, to be called the "Companies Auditors' and Liquidators' Board". In this and the next following section such Board is referred to as "the Board". The Registrar of Companies or his deputy shall be the Registrar of the Board.

(2) Two members of the Board shall have had actual experience in accountancy and business practice, and shall not be members of the Public Service.

(3) At the expiration of each year after the establishment of the Board, the member of the Board who has been longest in office since his appointment shall retire. If two or more members have been in office for an equal time since last appointed, the member to retire shall in default of agreement be determined by lot. A retiring member may be re-appointed.

(4) The Governor may at any time—

(a) appoint a member to be the chairman of the Board:

(b) remove any member of the Board:

(c) fill any vacancy on the Board, however arising.

Any person appointed to fill a vacancy on the Board shall hold office for the balance of the term of the member in whose place he was appointed.

(5) Any two members of the Board may exercise all or any of the powers of the Board.

(6) In the absence of the chairman the members present may appoint an acting chairman.
PART XIV.

Licensing of auditors and liquidators.

371. (1) Except as otherwise provided in this Act no person shall—

(a) act as the auditor of any company unless he holds an auditor's licence;

(b) act as the liquidator of any company unless he holds a liquidator's licence and has given security in the prescribed manner and amount to the satisfaction of the Board.

(2) Except as otherwise provided in this Act no company shall—

(a) appoint any person as auditor of the company unless he holds an auditor's licence:

(b) appoint any person as liquidator of the company unless he holds a liquidator's licence and has given security in the prescribed manner and amount to the satisfaction of the Board.

(3) Any person or company contravening subsection (1) or subsection (2) shall be guilty of an offence.

(4) The preceding subsections of this section shall not prevent any unlicensed person from acting or being appointed as an auditor or liquidator if his appointment as such is made before the expiration of one month after the commencement of this Act.

(5) If the Attorney-General is satisfied that it is impracticable or inconvenient for any company to appoint a licensed auditor or liquidator he may on the report of the Registrar of Companies authorise a competent person not holding a licence to act as auditor or liquidator of the company subject to conditions or restrictions which the Attorney-General thinks fit.

(6) No licence shall be issued under this section to a body corporate.

(7) The Board may issue an auditor's licence to any person who has attained the age of twenty-one years, is of good character and repute, and is competent to audit the accounts of companies.

(8) The Board may issue a liquidator's licence to any person who has attained the age of twenty-one years, is of good character and repute, and is competent to act as a liquidator of companies.

(9) For every such licence there shall be paid such fees as may be prescribed.

(10) The Board may inquire into the character, repute, and competency of any person applying to be licensed under this section.

(11) The Board, after giving notice to the holder of a licence and giving him an opportunity of being heard, shall have power at any time to inquire into the conduct and character as well as the abilities of such holder and upon being satisfied that such person is not a fit and proper person to hold such a licence, to cancel such licence.

(12) Any person aggrieved by any decision of the Board may, within three months from the date of his receiving notice thereof, apply to the Court to reverse such decision, and thereupon the Court may, if it think fit, reverse the same, and may direct the
Board to issue or re-issue to such person a licence, or to refrain from cancelling his licence, or may make any other order which the Board deems just.

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

(14) Any person who wilfully gives false evidence before the Board shall be guilty of perjury.

**Rules.**

**372.** (1) The Judges of the Court may make rules of Court under the Supreme Court Act, 1878—

(a) for carrying into effect the objects of this Act so far as relates to the winding-up of companies, to reduction of capital, and to any other matters wherein the Court has jurisdiction; and

(b) prescribing the fees to be paid in respect of any such proceedings; and

(c) prescribing scales of fees or remuneration to be charged by solicitors in respect of companies and any matters under or relating to this Act; and

(d) prescribing the manner in which the jurisdiction of the Court under this Act is to be exercised, and whether in Court or in chambers, or by a Judge or Master of the Court; and

(e) relating to procedure generally for the purposes of this Act, including rules as to costs and fees:

Provided that until such rules are made the general practice of the Supreme Court shall, so far as the same is applicable and not inconsistent with this Act, apply to all proceedings under this Act.

(2) Section 38 of the Acts Interpretation Act, 1915, shall apply to any rules made under this section.

**Regulations—Tables and Forms.**

**373.** (1) The Governor may make regulations for any purposes which he deems necessary or convenient in order to give full effect to the provisions and intentions of this Act.

(2) Such regulations may prescribe penalties not exceeding Fifty Pounds for the contravention thereof, or of other regulations.

**374.** (1) The forms in the First, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Tenth, and Eleventh Schedules to this Act, or forms as near thereto as circumstances admit, shall be used in all matters to which those forms refer.
PART XIV.

Service of documents.
Imp., s. 116.
Vic., s. 125.
Tas., s. 68.

Notices by letter.
S.A., s. 241.

Power to enforce orders
Imp., s. 372.
Vic., s. 180.
Tas. 182.

Power of Court to grant relief in certain cases.
Imp., s. 372.
Vic., s. 208.
Tas., s. 278.

New.

(2) The Governor may by regulations alter any of the tables in the First Schedule to this Act, and may by regulation alter or add to the forms in any of the other Schedules mentioned in subsection (1) of this section.

(3) Any such table or form when altered shall be published in the Gazette, and thenceforth shall have the same force as if it were included in one of the Schedules to this Act; but no alteration made by the Governor in any of the Tables in the said First Schedule shall affect any company registered before the alteration, or repeal as respects that company any portion of that table.

Service of Documents.

375. (1) A document may be served on a company by leaving it at, or sending it by post in a prepaid registered letter to the registered office of the company.

(2) Any document to be served by post on the company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof; and in proving service of such document it shall be sufficient to prove that such document was properly directed, and that it was posted as a prepaid letter.

Enforcement of Orders.

376. (1) All orders made by the Court under this Act may be enforced in the same manner as orders of the Court made in any action pending therein may be enforced.

(2) Subject to Rules of Court, an appeal from any order or decision made or given by the Court under this Act shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the Court in matters within its ordinary jurisdiction.

377. (1) If in any proceeding for negligence, default, breach of duty, or breach of trust against a person to whom this section applies it appears to the Court hearing the case that that person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that Court may relieve him, either wholly or partly, from his liability on such terms as the Court may think fit.

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the Court, for relief, and the Court on any such application shall have the same powers to relieve him as under this section it would have had if it had been a Court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.
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(3) Where any case to which subsection (1) of this section applies is being tried by a Judge with a jury, the Judge, after hearing the evidence, may, if he is satisfied that the defendant ought in pursuance of that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant on such terms as to costs or otherwise as the Judge may think proper.

(4) The persons to whom this section applies are the following—

(a) directors of a company:

(b) managers of a company:

(c) officers of a company:

(d) persons employed by a company as auditors, whether they are or are not officers of the company.

Lost Documents.

378. (1) It shall be lawful for any company duly incorporated or registered in this State, in case the memorandum or articles of association of such company, or any other document relating to such company filed with the Registrar in pursuance of the provisions of any law shall have been lost or destroyed, to apply to the Court for liberty to file with the Registrar a copy of the memorandum or articles of association of such company, or such other document relating to such company as originally so filed with the Registrar.

(2) Any such application as aforesaid may be made by summons, and such summons shall be served on the Registrar in the first instance, and notice thereof shall also be given to such other persons and in such manner as the said Court may direct.

(3) The Court, upon being satisfied by affidavit or by viva voce evidence or otherwise, of the fact that the original memorandum or articles of association of, or other document relating to, such company filed as aforesaid have been lost or destroyed, and of the date of the filing thereof with the Registrar, and that a copy of such memorandum or articles of association or other document produced to the Court is a correct copy of such memorandum or articles of association or other document, may give a certificate in or to the effect of the Form C in the Eleventh Schedule to this Act upon such copy, and may make an order empowering the said company to file such copy with the Registrar, who shall thereupon, and upon the filing of such copy with him, register the same in the manner required by law in respect of the original memorandum or articles of association or other document.

(4) Upon such registration as aforesaid such copy for all purposes whatsoever shall be deemed to be and from such date as is mentioned in the said certificate as the date of the filing of the original with the Registrar to have been and to have the same force and effect as the original memorandum, articles of association, or other document of which it purports to be a copy.
(5) The Court may by order upon a like application as herein-before mentioned by any person aggrieved, and after notice to any other person whom the Court may direct, vary or rescind the said certificate; and such order may be filed with the Registrar, to be by him registered: Provided that no payments, contracts, dealings, acts, and things bona fide made, had, or done before the registration of such order, and upon the faith of and in reliance upon the said certificate, shall be invalidated or affected by such variation or rescission.

(6) The Court may make such order as to the costs of any application under this Act as shall appear just.

(7) This section shall apply not only to companies under this Act or the Companies Acts, but also to all companies incorporated by or under any Act of the Parliament of South Australia.

379. In the event of the loss, defacement, or destruction of any share certificate, letter of allotment, transfer receipt, or any other document of title to shares, it shall be lawful for a company, on request in writing of the person entered in the register of members as the holder of such shares, to issue a duplicate thereof upon the following conditions:

(1) An advertisement shall be inserted in one daily newspaper in Adelaide and in the Government Gazette, containing particulars of the lost document, and giving notice of the intention of the company at the expiration of twenty-one days from the publication of such advertisement to issue a duplicate thereof.

(2) The company shall require the applicant, and such other persons as it may see fit, to make statutory declarations of and as to the circumstances surrounding the loss, defacement, or destruction.

(3) The company may require such indemnities, bonds, or guarantees from the applicant or such other person as it sees fit to protect it from any claim or loss arising by reason of or incidental to the issue of such duplicate.

(4) Any document issued hereunder shall bear indorsed on the face thereof the words "Issued in lieu of lost (defaced, or destroyed) share certificate or letter of allotment or transfer receipt", as the case may be.

(5) Within seven days from the issue of such substitute document the company shall file a copy of the said advertisement and details of the substitute document so issued with the Registrar.

(6) All costs and expenses of and incidental to the issue of a substitute document hereunder shall be at the cost of the owner of the lost document.

Miscellaneous.

380. (1) No proceeding taken before any Court under the Companies Acts or under this Act shall be invalidated by any defect, irregularity, or deficiency of notice or time, unless the Court is of opinion that substantial injustice may be caused by such defect, irregularity, or deficiency, and that such injustice cannot be remedied by any order of such Court.
(2) The Court may, if it think fit, make an order, declaring that such proceeding is valid, notwithstanding any such defect, irregularity, or deficiency.

381. (1) Where a company is plaintiff or complainant in any action or other legal proceedings, other than such as in section 382 of this Act mentioned any Court or Judge or Special Magistrate having jurisdiction in the matter may, if he has reason to believe that if the defendant is successful in his defence the assets of the company will be insufficient to pay his costs, require sufficient security to be given for those costs, and may stay all proceedings until such security is given.

(2) In this section the word “company” includes all companies however and wherever incorporated, whether a company within the meaning of this Act or not, and a company within the meaning of Part XI. of this Act.

382. In any action brought by a company against any member to recover any call or other money due from such member in his character of member it shall not be necessary to set forth the special matter, but it shall be sufficient to allege that the defendant is a member of the company, and is indebted to the company in respect of a call made, or other money due.

383. Where a company being wound up, either by or under the supervision of the Court or voluntarily, has not sufficient available assets, the liquidator shall not be required to incur any expense in relation to the winding-up without the express direction of the Registrar.

384. (1) Where any person has obtained a judgment or order in a local court against a company for the payment of any sum of money not exceeding Fifty Pounds, or who has obtained any judgment, decree, or order of the Supreme Court or a Court of competent jurisdiction for the payment by a company of any sum not exceeding Fifty Pounds which said sum has not been paid, the party entitled to the benefit of such judgment, order, or decree may serve on the company by leaving it at the registered office of the company a notice requiring the company to pay the amount so due.

(2) If the company for seven days thereafter neglects to pay the amount so due or to secure or compound for it to the reasonable satisfaction of the party giving the notice, such party may apply to the local court having jurisdiction as provided by subsection (2) of section 175 of the Local Courts Act, 1926, to issue a judgment summons as provided by section 175 of the Local Courts Act, 1926, against any person proved to be a director or manager or secretary of the company.

(3) Upon an application under subsection (2) of this section the local court shall have jurisdiction to issue a judgment summons against any director, manager, or secretary of the company in the same manner as if the director, manager, or secretary were a party liable to pay the amount due under the judgment order or decree.
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(4) Any judgment summons issued as aforesaid shall have the same effect, and the person to whom it is directed shall obey the same and be subject to the same obligations and penalties as if he were a party liable to pay the amount so due, save and except that—

(a) he shall not be personally liable to pay any part of the amount due except out of the moneys of the company in his hands or subject to his control;

(b) he shall not be liable to be imprisoned under paragraphs (d) to (i), both inclusive, of section 178 of the Local Courts Act, 1926; and

(c) the following provisions shall be substituted for section 117 of the Local Courts Act which shall not apply:

At the hearing of the summons—

1. the person summoned may be examined upon oath touching the company's estate and effects and whether any and what debts are owing or accruing due to the company, as to the property and means the company has of discharging the judgment, order, or decree, and as to the disposal or dealings of the company with any of its assets, and as to the whereabouts of any chattel detained or specific goods ordered to be delivered, as to what inquiries he has made under subparagraph (III.) of this subsection and upon such other matters relating to the company as are prescribed by rules under Local Courts Act, 1926, or are specified in the summons:

2. if the person summoned has no personal knowledge of the matters referred to in the last preceding paragraph or of any matter upon which he may be examined he shall make inquiries of the officers or servants of the company to enable him to fully answer all such matters:

3. the court may order the company to pay the judgment debt at such times or in such instalments as it thinks fit, and may make an order under section 185 of the Local Courts Act, 1926, in the same manner as if the company were a judgment debtor orally examined on the hearing of an unsatisfied judgment summons.

(5) Any officer of a company summoned under the provisions of this section and the company may be represented by counsel or a solicitor on any hearing under this section and may adduce evidence thereat.
In this section the word "company" includes any company however incorporated, registered in, or carrying on business in this State whether a company within the meaning of this Act or not.

385. (1) The transfer after the commencement of this Act of a share in any company to an infant for the purpose of avoiding or evading liability with regard to such share, shall not relieve the transferor of any such liability.

(2) No transfer after the commencement of this Act of a share in any company made for the purpose of avoiding or evading liability with regard to such share, shall relieve the transferor of any such liability, if the transfer is made to any person for a nominal consideration, or for no consideration, or for valuable consideration expressed, but not paid to the transferor, or for a consideration paid to the transferee, or with a trust or reservation expressed or implied for the benefit of the transferor, or to a person known to the transferor to be unable to pay the liability on such share, unless such transfer shall have been made and registered two years before the company shall be wound up.

386. Notwithstanding any other provision of this Act, where a share certificate has been deposited as security for the payment of any sum of money, and notice in writing has been given by or on behalf of the depositee to the company that the certificate for shares in the company, which shares are specifically identified in the notice by the numbers thereof, has been lodged as security for the payment of any sum of money specified in such notice, any lien of the company, and any right of the company arising after receipt of the notice to payment by the registered holder of the shares of any sum or sums of money before the holder of such shares is entitled to participate in the profits or assets of the company, shall not, except to the amount (if any) unpaid on the shares and interest thereon, and any tax or duty imposed or charged on or against such shares or any dividends or interest therein or thereon which the company may collect from the shareholder whether becoming payable before or after such notice, have priority to the rights of the depositee to participate in the profits or assets of the company under or by virtue of the security so notified: Provided that nothing herein contained shall limit or restrict any other right or remedy the company may have against the registered holder of the shares and: Provided further that any advances made by or moneys becoming secured to the person entitled to the security notified as aforesaid after notice that a lien charge or set-off has arisen in favor of the company, whether by act of any person or by operation of law, shall be postponed to the company's lien charge or set-off.

387. If any company advertises, circulates, or publishes any written or printed statement of the amount of its capital, which is misleading, or in which the amount of nominal or authorised capital is stated without the words "nominal" or "authorised," or in which the amount of capital, or authorised or subscribed capital is stated, but the amount of paid-up capital is not stated, every such
PART XIV.

Penalty for false statement.
Imp., s. 362.
Vic., s. 290.
New.

388. If any person in any return, declaration, report, certificate, balance sheet, or other document, required by or for the purposes of any provisions of this Act wilfully makes a statement false in any material particular, knowing it to be false, he shall be guilty of a misdemeanor, and shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, and be liable on summary conviction to imprisonment for a term not exceeding four months, and in either case to a fine in lieu of or in addition to such imprisonment as aforesaid:

Provided that—
(a) the fine imposed on summary conviction shall not exceed One Hundred Pounds:
(b) nothing in this section shall affect the provisions of the law relating to perjury or of the Statutory Declarations Act, 1915.

389. (1) Any person who by any false pretence or fraudulent promise persuades or attempts to persuade any person—
(a) to apply for, subscribe for, underwrite, obtain, or to agree to apply for, subscribe for, underwrite, or obtain any share, debenture, or other interest in any company or in the assets thereof:
(b) to lend or agree to lend any money to any company:
(c) to transfer or agree to transfer any property or interest to any company:
(d) to undertake or agree to undertake any liability for or on account of any company or from which any company may derive benefit,

shall be guilty of a misdemeanor and liable to imprisonment with hard labour for not more than two years.

In this section “company” means existing or proposed company.

(2) Any director or manager of a company who aids, abets, counsels, or procures or knowingly permits an officer or agent of the company to make any false pretence or fraudulent promise, within the meaning of subsection (1) hereof, shall be guilty of a misdemeanour and liable to imprisonment with hard labour for not more than two years.

390. If any person or persons trade or carry on business under any name or title of which “Limited,” or “No-Liability,” or any contraction or imitation of either of those words, is the last word, that person or those persons shall, unless duly incorporated with limited liability, or no liability as the case may be, be liable to a fine not exceeding Two Pounds for every day upon which that name or title has been used.

391. Where any matter or thing is by this Act directed or forbidden to be done, and such act so directed to be done remains undone, or such act so forbidden to be done is done, in every such case unless a specific penalty is provided therefor, every company or person offending against such direction or prohibition shall be liable to a fine not exceeding Twenty Pounds, and in the case of a continuing offence to a default fine.
The Companies Act.—1934.

392. (1) Where by any enactment in this Act it is provided that a company and every officer of the company who is in default shall be liable to a default fine, the company and every such officer shall, for every day during which the default, refusal, or contravention continues, be liable to a fine not exceeding such amount as is specified in the said enactment, or, if the amount of the fine is not so specified, to a fine not exceeding Two Pounds.

(2) For the purposes of any enactment in this Act which provides that an officer of a company who is in default shall be liable to a fine or penalty, the expression "officer who is in default" means any director, manager, secretary, or other officer of the company, who knowingly and wilfully authorises or permits the default, refusal, or contravention mentioned in the enactment.

393. All offences (not being expressed to be misdemeanours), under this Act made punishable by any penalty may, unless otherwise provided, be disposed of summarily.

394. The Court imposing any penalty under this Act may direct that the whole or any part thereof be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person on whose information or at whose suit the penalty is recovered.

395. Notwithstanding anything contained in the Justices Act, 1921, or any other Act, proceedings may be taken for any offence under this Act within two years from the commission thereof, or within six months from the date of the commencement of the liquidation of the company.

396. In proceedings in respect of offences against this Act the following allegations contained in the complaint or information shall be deemed proved in the absence of satisfactory proof by the defendant to the contrary:

(a) that a named company is a company duly incorporated, and to which this Act or any named section thereof applies:

(b) that the defendant, or a person named in the complaint or information, is a director, manager, or an officer of the company named in the complaint or information:

(c) that any meeting of the shareholders or creditors of any company required by this Act to be held within any particular time has not been held as required by a specified section of this Act.

397. Notwithstanding the provisions of subsection (1) of section 2 of this Act all companies which within twenty-one days from the thirty-first day of March next after the commencement of this Act, would have been required to file a list and summary pursuant to sections 29 and 30 of The Companies Act, 1892, if this Act had not passed, shall within twenty-one days from the thirty-first day of March next after the commencement of this Act, file such a list and summary as they would have been required to file under those sections, and for that purpose sections 29 and 30 of The Companies Act, 1892, shall remain in force so far and for such period as is necessary to give effect to this section: Provided that the Governor may by proclamation dispense with compliance with this section.
398. (1) Any annual return required to be filed by any existing company within twelve months from the date on which this Act receives the Royal Assent shall be sufficient if it is in the form required or authorised by The Companies Act, 1892.

(2) Where any existing company having a share capital is required to alter its form or method of keeping accounts and records or the form of its balance-sheet to comply with sections 141 to 147 of this Act it shall be deemed sufficient compliance with this Act if the alteration of such form or method is made as from the first balancing date of the company next following the date on which this Act receives the Royal Assent or, where that balancing date falls earlier than six months after the date of the Royal Assent to this Act, from the second balancing date of the company next following the date of such Royal Assent: Provided that until such alteration the accounts, records, and balance-sheets shall be in the form authorised or required by The Companies Act, 1892, and the memorandum and articles of association of the company.

399. Any application to the Court under or pursuant to this Act not heard by a Judge or Master in Chambers shall in the first instance be heard by a single Judge.

400. Where by any private Act, whether passed before or after this Act, powers have been conferred on any company incorporated outside the State, the express grant of powers to the company by the private Act shall not be held to restrict by implication any other powers of the company.

401. No member of any association incorporated under the Associations Incorporation Act, 1929, or any Act repealed by that Act shall as such member be under any personal liability to any creditor of the association except as expressly provided in the rules, regulations, or trust deed of the association.

402. The rule against perpetuities shall not apply and shall be deemed never to have applied to any fund or scheme for the benefit of any employees of a company whether such fund or scheme was established before or after the passing of this Act. In this section—

"fund or scheme" includes any provident, superannuation, sick, accident, assurance, unemployment, pension, co-operative, benefit, or other like fund, scheme, arrangement, or provision:

"employees" includes any persons at any time in the employment of a company and the wives, children, grandchildren, parents, or other dependents of any such persons and any other persons entitled to or capable of receiving any benefit under any fund or scheme.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

W. DUGAN, Governor.

SCHEDULES.
25° GEORGII V, No. 2196.

The Companies Act.—1934.

SCHEDULES.

FIRST SCHEDULE.

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES.

Preliminary.

1. In these regulations:

"The Act" means the Companies Act, 1934.

When any provision of the Act is referred to, the reference is to that provision as modified by any statute for the time being in force.

Unless the context otherwise requires, expressions defined in the Act or any statutory modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined.

Shares.

2. Subject to the provisions, if any, in that behalf of the memorandum of association, and without prejudice to any special rights previously conferred on the holders of existing shares, any share may be issued with such preferred, deferred, or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital, or otherwise, as the company may from time to time by special resolution determine, and any preference share may, with the sanction of a special resolution, be issued on the terms that it is, or at the option of the company is liable, to be redeemed.

3. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class), may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall

mutatis mutandis

apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class, and that any holder of shares of the class present in person or by proxy may demand a poll.

4. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the seal of the company specifying the share or shares held by him and the amount paid up thereon, provided that in respect of a share or shares held jointly by several persons, the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

5. If a share certificate is defaced, lost, or destroyed, it may be renewed on payment of such fee, if any, not exceeding one shilling, and on such terms, if any, as to evidence and indemnity, as the directors think fit.

6. No part of the funds of the company shall directly or indirectly be employed in the purchase of dealing in or in loans upon the security of, or in relation to the company's shares, but nothing in this regulation shall prohibit transactions mentioned in the proviso to section 62 (I) of the Act.

Lien.

7. The company shall have a lien on every share (not being a fully paid share), for all moneys (whether presently payable or not), called or payable at a fixed time in respect of that share, and the company shall also have a lien on all shares (other than fully paid shares), standing registered in the name of a single person for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this regulation. The company's lien, if any, on a share shall extend to all dividends payable thereon.

8. The
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25° GEORGII V, No. 2196.

The Companies Act.—1934.

8. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or to the person entitled thereto by reason of his death or bankruptcy.

9. For giving effect to any such sale the directors may authorise some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

10. The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale), be paid to the person entitled to the shares at the date of the sale.

Calls on Shares.

11. (a) The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares provided that no call shall exceed one-fourth of the nominal amount of the share, or be payable at less than one month from the last call; and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of payment) pay to the company at the time or times so specified the amount called on his shares.

(b) A call shall be deemed to have been made at the time when the resolution of the directors authorizing such call was passed.

(c) On the trial or hearing of any action by the company against any member to recover any debt due for any call, it shall be sufficient to prove that the name of the member sued is on the register of members as the holder, on one of the holders, of the number of shares in respect of which such debt accrued, and that notice of such call was given in pursuance of the company's regulations, and it shall not be necessary to prove the appointment of the directors who made such call, nor that a quorum of directors was present at the board when such call was made, nor that the meeting at which such call was made was duly convened or constituted, nor any other matter whatsoever, but proof of the matters first above-mentioned shall be conclusive evidence of the debt.

12. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

13. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of Seven Pounds per centum per annum from the day appointed for the payment thereof, to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

14. The provisions of these regulations as to the liability of joint holders and as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

15. The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

16. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may (until the same advanced is called for in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or to the person entitled thereto by reason of his death or bankruptcy.) as may be agreed upon between the member paying the sum in advance and the directors.

Transfer
Transfer and Transmission of Shares.

17. The instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee, and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

18. Shares shall be transferred in the following form, or in any usual or common form which the directors shall approve:—I, A.B., of , in consideration of the sum of £ paid to me by C.D. of (hereinafter called "the said transferee") do hereby transfer to the said transferee the share (or shares) numbered in the undertaking called the Company, Limited, to hold unto the said transferee, subject to the several conditions on which I hold the same; and I, the said transferee, do hereby agree to take the said share (or shares) subject to the conditions aforesaid. As witness our hands the day of

Witness to the signatures of, &c.,

19. The directors may decline to register any transfer of shares, not being fully paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The directors may also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. The directors may decline to recognise any instrument of transfer unless—

(a) a fee not exceeding Two Shillings and Sixpence is paid to the company in respect thereof, and

(b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

If the directors refuse to register a transfer of any shares, they shall within one month after the date on which the transfer was lodged with the company send to the transferee notice of the refusal.

20. The legal personal representatives of a deceased sole holder of a share shall be the only persons recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the legal personal representatives of the deceased survivor, shall be the only persons recognised by the company as having any title to the share.

21. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall, upon such evidence being produced as may from time to time be properly required by the directors, have the right, either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or bankrupt person could have made; but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or bankrupt person before the death or bankruptcy.

22. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

Forfeiture of Shares.

23. If a member fails to pay any call or installment of any call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or installment remains unpaid, serve a notice on him requiring payment of so much of the call or installment as is unpaid, together with any interest which may have accrued.

24. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice), on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

25. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

26. A
26. A forfeited share may be sold, or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

27. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company receive payment in full of the nominal amount of the shares.

28. A statutory declaration in writing that the declarant is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share. The company may receive the consideration, if any, given for the share on any sale or disposition thereof, and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of, and he shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

29. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium as if the same had been payable by virtue of a call duly made and notified.

Conversion of Shares into Stock.

30. The company may by ordinary resolution convert any paid-up shares into stock, and re-convert any stock into paid-up shares of any denomination.

31. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as, and subject to which, the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that amount, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

32. The holders of stock shall, according to the amount of the stock held by them have the same rights, privileges, and advantages as regards dividends, voting at meetings of the company, and other matters, as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company), shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

33. Such of the regulations of the company as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder."

Alteration of Capital.

34. The company may from time to time by extra-ordinary resolution increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

35. Subject to any direction to the contrary that may be given by the company in general meeting, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of those shares in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

36. The
36. The new shares shall be subject to the same provisions with reference to
the payment of calls, lien, transfer, transmission, forfeiture, and otherwise as the
shares in the original share capital.

37. The company may by extra-ordinary resolution—
(a) consolidate and divide all or any of its share capital into shares of larger
amount than its existing shares;
(b) subdivide its existing shares, or any of them, into shares of smaller amount
than is fixed by the memorandum of association subject, nevertheless,
to the provisions of section 67 (1) iv. of the Act;
(c) cancel any shares which, at the date of the passing of the resolution, have
not been taken or agreed to be taken by any person.

38. The company may by special resolution reduce its share capital and any
capital redemption reserve fund in any manner and with, and subject to, any
incident authorised, and consent required, by law.

General Meetings.

39. A general meeting shall be held once in every calendar year at such time
(not being more than fifteen months after the holding of the last preceding general
meeting) and place as may be prescribed by the company in general meeting, or
in default, at such time in the third month following that in which the anniversary
of the company's incorporation occurs, and at such place, as the directors shall
appoint. In default of a general meeting being so held, a general meeting shall
be held in the month next following, and may be convened by any two members
in the same manner as nearly as possible as that in which meetings are to be con­
vened by the directors.

40. The above-mentioned general meetings shall be called ordinary general
meetings; all other general meetings shall be called extraordinary general meetings.

41. The directors may, whenever they think fit, convene an extraordinary
general meeting, and extraordinary general meetings shall also be convened on
such requisition, or, in default, may be convened by such requisitionists, as provided
by section 133 of the Act.

42. Subject to the provisions of section 136 (2) of the Act relating to special
resolutions, seven days' notice at the least (exclusive of the day on which the notice
is served or deemed to be served, but inclusive of the day for which notice is given)
specifying the place, the day, and the hour of meeting, and, in case of special business,
the general nature of that business shall be given in manner hereinafter mentioned,
or in such other manner, if any, as may be prescribed by the company in general
meeting, to such persons as are, under the regulations of the company, entitled to
receive such notices from the company; but with the consent of all the members
titled to receive notices of some particular meeting, that meeting may be con­
vened by such shorter notice and in such manner as those members may think fit.

43. The accidental omission to give notice of a meeting to, or the non-receipt
of notice of a meeting by, any member shall not invalidate the proceedings at any
meeting.

PROCEEDINGS AT GENERAL MEETINGS.

44. All business shall be deemed special that is transacted at an extraordinary
meeting, and all that is transacted at an ordinary meeting, with the exception of
sanctioning a dividend, the consideration of the accounts, balance-sheets, and the
ordinary report of the directors and auditors, the election of directors and other
officers in the place of those retiring by rotation, and the fixing of the remuneration
of the auditors.

45. No business shall be transacted at any general meeting unless a quorum of
members is present at the time when the meeting proceeds to business; save as
herein otherwise provided, three members personally present shall be a quorum.

46. If within fifteen minutes from the time appointed for the meeting a quorum
is not present, the meeting, if convened upon the requisition of members, shall be
dissolved.
dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within fifteen minutes from the time appointed for the meeting the members present shall be a quorum.

47. The Chairman, if any, of the board of directors, or in his absence one of the directors, to be chosen by the meeting, shall preside as chairman at every general meeting of the company.

48. If there is no such chairman or director present within fifteen minutes after the time appointed for holding the meeting, or if present is unwilling to act as chairman, the members present may choose some one of their number to be chairman.

49. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

50. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members present in person or by proxy entitled to vote or by one member or two members so present and entitled, if that member or those two members together hold not less than 15 per cent. of the paid-up capital of the company, and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favor of, or against, that resolution.

51. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

52. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

53. A poll demanded on the election of a chairman or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Votes of Members.

54. On a show of hands every member present in person or by attorney shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.

55. In the case of joint holders the vote of the senior who tenders a vote whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

56. A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, curador bonis, or other person in the nature of a committee or curator bonis appointed by that Court, and any such committee, curator bonis, or other person may, on a poll, vote by proxy.

57. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

58. On a poll votes may be given either personally or by proxy.

59. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation, either under seal, or under the hand of an officer or attorney duly authorised. A proxy need not be a member of the company.

60. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed, or a notorially certified copy of that power
power or authority shall be deposited at the registered office of the company not less than twenty-four hours before the time for holding the meeting or adjourned meeting, at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

61. An instrument appointing a proxy may be in the following form, or any other form which the directors shall approve:—

Company, Limited.

"I, of in the State of , being a member of the Company, Limited, hereby appoint , of as my proxy, to vote for me and on my behalf at the (ordinary or extraordinary, as the case may be) general meeting of the company to be held on the day of and at any adjournment thereof ".

Signed this day of

62. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

Corporations Acting by Representatives at Meetings.

63. Any corporation which is a member of the company may by resolution of its directors or other governing bodies authorise such person as it thinks fit to act as its representative at any meeting of the company or of any class of members of the company, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

Directors.

64. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association.

65. The remuneration of the directors shall from time to time be determined by the company in general meeting.

66. The qualification of a director shall be the holding of at least one share in the company.

Powers and Duties of Directors.

67. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not, by the Act, or by these articles, required to be exercised by the company in general meeting, subject, nevertheless, to any regulation of these articles, to the provisions of the Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

68. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term and at such remuneration (whether by way of salary, or commission, or participation in profits, or partly in one way and partly in another) as they may think fit, and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the rotation or retirement of directors; but his appointment shall be subject to determination ipso facto if he ceases from any cause to be a director, or if the company in general meeting resolve that his tenure of the office of managing director or manager be determined.

69. The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting.

70. The directors shall cause minutes to be made in books provided for the purpose—

(e) of all appointments of officers made by the directors;

(b) of the names of the directors present at each meeting of the directors and of any committee of the directors;
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(e) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors;

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

The Seal.

71. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of a director and of the secretary or such other person as the directors may appoint for the purpose; and that director and the secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Disqualification of Directors.

72. The office of director shall be vacated if the director—
(a) ceases to be a director by virtue of section 162 of the Act; or
(b) without the consent of the company in general meeting holds any other office of profit under the company except that of managing director or manager; or
(c) becomes bankrupt; or
(d) becomes prohibited from being a director by reason of any order made under section 237 or 290 of the Act; or
(e) is found insane or becomes of unsound mind; or
(f) resigns his office by notice in writing to the company; or
(g) is directly or indirectly interested in any contract with the company or participates in the profits of any contract with the company.

Provided, however, that a director shall not vacate his office by reason of his being a member of any corporation or firm which has entered into any contract with or done work for the company if he shall have declared the nature of his interest in manner required by section 167 of the Act; but the director shall not vote in respect of any such contract or work or any matter arising thereout, and if he does so vote his vote shall not be counted.

Rotation of Directors.

73. At the first ordinary general meeting of the company the whole of the directors shall retire from office, and at the ordinary general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.

74. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who become directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

75. A retiring director shall be eligible for re-election.

76. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto, and in default the retiring director shall be deemed to have been re-elected unless at such meeting it is resolved not to fill up such vacated office.

77. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

78. Any casual vacancy occurring in the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

79. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

80. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead. The person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

Proceedings
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Proceedings of Directors.

81. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

82. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall when the number of directors exceeds three, be three, and when the number of directors does not exceed three, be two.

83. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

84. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

85. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.

86. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

87. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes, the chairman shall have a second or casting vote.

88. All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends and Reserve.

89. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

90. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

91. No dividend shall be paid otherwise than out of profits.

92. Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid up on any of the shares in the company, dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.

93. The directors may, before recommending any dividend, set aside out of the profits of the company, such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalising dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company, or be invested in such investments (other than shares of the company), as the directors may from time to time think fit.

94. If several persons are registered as joint holders of any share, any one of them may give effectual receipts for any dividend or other moneys payable on or in respect of the share.
95. Any dividend may be paid by cheque or warrant sent through the post to the registered address of the member or person entitled thereto, or in the case of joint holders to any one of such joint holders at his registered address, or to such person and such address as the member or person entitled or such joint holders as the case may be may direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent, or to the order of such other person as the member or person entitled or such joint holders as the case may be may direct. No dividend shall bear interest against the company.

96. Accounts.

97. The directors shall cause proper books of account to be kept with respect to—
   All sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
   All sales and purchases of goods by the company; and
   The assets and liabilities of the company.

98. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

99. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meeting.

100. The directors shall from time to time in accordance with section 142 of the Act, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance-sheets, and reports as are referred to in that section.

101. A copy of every balance-sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting together with a copy of the auditors' report shall not less than seven days before the date of the meeting be sent to all persons entitled to receive notices of general meetings of the company.

102. Auditors shall be appointed and their duties regulated in accordance with sections 153, 154, and 155 of the Act.

103. A notice may be given by the company to any member either personally or by sending it by post to him at his registered address, or (if he has no registered address within the State of South Australia) to the address, if any, within the said State supplied by him to the company for the giving of notices to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of 24 hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

104. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register of members in respect of the share.

105. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, within the State of South Australia supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.
107. Notice of every general meeting shall be given in some manner hereinbefore authorized to—
(a) every member except those members who (having no registered address within the State of South Australia) have not supplied to the company an address within the said State for the giving of notices to them, and also to—
(b) every person entitled to a share in consequence of the death or bankruptcy of a member, who, but for his death or bankruptcy, would be entitled to receive notice of the meeting. No other persons shall be entitled to receive notices of general meetings.

TABLE B.

REGULATIONS FOR MANAGEMENT OF A NO-LIABILITY COMPANY.

Preliminary.

1. In these regulations:—
   “The Act” means the Companies Act, 1934.
When any provision of the Act is referred to, the reference is to that provision as modified by any statute for the time being in force.
Unless the context otherwise requires, expressions defined in the Act or any statutory modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined.

Members not Liable for Calls.

2. Nothing in these articles shall render any member of the company liable to be sued for any calls in respect of any shares held by him or for any contribution to the debts and liabilities of the company.

Shares.

3. Subject to the provisions, if any, in that behalf of the memorandum of association, and without prejudice to any special rights previously conferred on the holders of existing shares, any share may be issued with such preferred, deferred, or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital, or otherwise, as the company may from time to time by special resolution determine, and any preference share may, with the sanction of a special resolution, be issued on the terms that it is, or at the option of the company is liable, to be redeemed.

4. Any shares may be issued at such premiums as the directors may think fit.

5. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class), may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall mutatis mutandis apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class, and that any holder of shares of the class present in person or by proxy may demand a poll.

6. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the seal of the company specifying the share or shares held by him and the amount paid up thereon, provided that in respect of a share or shares held jointly by several persons, the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

7. If a share certificate is defaced, lost, or destroyed, it may be renewed on payment of such fee, if any, not exceeding one shilling, and on such terms, if any, as to evidence and indemnity, as the directors think fit.

8. No part of the funds of the company shall directly or indirectly be employed in the purchase of dealing in or in loans upon the security of, or in relation to the company’s shares, but nothing in this regulation shall prohibit transactions mentioned in the proviso to section 62 (1) of the Act.

Calls.
The Directors may from time to time make such calls as they think fit upon the members in respect of all monies (if any) unpaid on their shares, and not by the conditions of allotment or other special arrangement, made payable at fixed times.

The resolution of the directors authorising a call to be made shall be passed not less than ten days before the day upon which the call shall be payable, and every call shall be deemed to be made at the time when the resolution therefor was passed.

If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, such sum shall carry interest at the rate of seven pounds per centum per annum from the day appointed for the payment thereof, to the time of the actual payment or redemption, but the directors shall be at liberty to waive payment of that interest wholly or in part.

The resolution of the directors authorising a call to be made shall be passed not less than ten days before the day upon which the call shall be payable, and every call shall be deemed to be made at the time when the resolution therefor was passed.

The resolution of the directors authorising a call to be made shall be passed not less than ten days before the day upon which the call shall be payable, and every call shall be deemed to be made at the time when the resolution therefor was passed.

The directors may, if they think fit, receive from any member willing to advance the same all or any part of the monies uncalled and unpaid upon any shares held by him; and upon all or any of the monies so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, seven per cent.) as may be agreed upon between the member paying the sum in advance and the directors.

The company may apply all dividends which may be declared in respect of any shares in payment of any calls made in respect of the same shares remaining unpaid.

Transfer and Transmission of Shares.

The instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee, and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

Shares shall be transferred in the following form, or in any usual or common form which the directors shall approve:—I, A.B., of , in consideration of the sum of £ paid to me by C.D. of (hereinafter called "the said transferee") do hereby transfer to the said transferee the share (or shares) numbered in the undertaking called the Company, No-liability, to hold unto the said transferee, subject to the several conditions on which I hold the same; and I, the said transferee, do hereby agree to take the said share (or shares) subject to the conditions aforesaid. As witness our hands the day of

Witness to the signatures of, &c.,

The directors, and at any branch-office, the local director, or the company's attorney may decline to register any transfer of shares upon which any call or instalment or any money paid by the company on behalf of the holder of the share, shall be due and unpaid.

The directors may suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. The directors may decline to recognise any instrument of transfer unless—

(a) a fee not exceeding Two Shillings and Sixpence is paid to the company in respect thereof; and

(b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

If the directors refuse to register a transfer of any shares, they shall within one month after the date on which the transfer was lodged with the company send to the transferee notice of the refusal.

The legal personal representatives of a deceased sole holder of a share shall be the only persons recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the legal personal representatives of the deceased survivor, shall be the only persons recognised by the company as having any title to the share.

Any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall, upon such evidence being produced as may from time to time be properly required by the directors, have the right, either to be registered
registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or bankrupt person could have made; but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or bankrupt person before the death or bankruptcy.

20. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

Conversion of Shares into Stock.

21. The company may by ordinary resolution convert any paid-up shares into stock, and re-convert any stock into paid-up shares of any denomination.

22. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as, and subject to which, the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that amount, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

23. The holders of stock shall, according to the amount of the stock held by them have the same rights, privileges, and advantages as regards dividends, voting at meetings of the company, and other matters, as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company), shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

24. Such of the regulations of the company as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder."

Alteration of Capital.

25. The company may from time to time by extraordinary resolution increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

26. Subject to any direction to the contrary that may be given by the company in general meeting, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of those shares in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

27. The new shares shall be subject to the same provisions with reference to the payment of calls, transfer, transmissions, forfeiture, and otherwise as the shares in the original share capital.

28. The company may by extraordinary resolution—

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

(b) subdivide its existing shares, or any of them, into shares of smaller amount than is fixed by the memorandum of association subject, nevertheless, to the provisions of section 67 (1) (iv.) of the Act;

(c) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.
29. The company may by special resolution reduce its share capital and any capital redemption reserve fund in any manner and with, and subject to, any incident authorised, and consent required, by law.

**General Meetings.**

30. A general meeting shall be held once in every calendar year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or in default, at such time in the third month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

31. The above-mentioned general meetings shall be called ordinary general meetings; all other general meetings shall be called extraordinary general meetings.

32. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section 133 of the Act. If at any time there are not within the State of South Australia sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

**Notice of General Meetings.**

33. Subject to the provisions of section 136 (2) of the Act relating to special resolutions, seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day, and the hour of meeting, and, in case of special business, the general nature of that business shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but with the consent of all the members entitled to receive notices of some particular meeting, that meeting may be convened by such shorter notice and in such manner as those members may think fit.

34. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any members shall not invalidate the proceedings at any meeting.

**PROCEEDINGS AT GENERAL MEETINGS.**

35. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, the consideration of the accounts, balance-sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

36. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members personally present shall be a quorum.

37. If within fifteen minutes from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within fifteen minutes from the time appointed for the meeting the members present shall be a quorum.

38. The chairman, if any, of the board of directors, or in his absence one of the directors to be chosen by the meeting, shall preside as chairman at every general meeting of the company.

39. If there is no such chairman, or director, present within fifteen minutes after the time appointed for holding the meeting, or if he is present but is unwilling to act as chairman, the members present may choose some one of their number to be chairman.

40. The
The Companies Act.—1934.

40. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

41. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members present in person or by proxy entitled to vote or by one member or two members so present and entitled, if that member or those two members together hold not less than 15 per cent, of the paid-up capital of the company, and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favor of, or against, that resolution.

42. If a poll is duly demanded it shall be taken in such a manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

43. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

44. A poll demanded on the election of a chairman or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Votes of Members.

45. On a show of hands every member present in person or by attorney shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.

46. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

47. A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, curator bonis, or other person in the nature of a committee or curator bonis appointed by that Court, and any such committee, curator bonis, or other person may, on a poll, vote by proxy.

48. No members shall be entitled to vote at any general meeting in respect of any share unless all calls due and payable on such share have been paid.

49. No member shall be entitled to vote in respect of any share that he has acquired by transfer unless he has been the registered holder of the share in respect of which he claims to vote for at least one clear day previously to the time of holding the meeting at which he proposes to vote.

50. On a poll votes may be given either personally or by proxy.

51. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation, either under seal, or under the hand of an officer or attorney duly authorised. A proxy need not be a member of the company.

52. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed, or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than twenty-four hours before the time for holding the meeting or adjourned meeting, at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

53. An
53. An instrument appointing a proxy may be in the following form, or any other form which the directors shall approve:

Company, No-liability,

"I, of

in the State of

Company, No-liability, hereby appoint

of

as my proxy, to vote for me and on my behalf at the (ordinary or extraordinary, as the case may be) general meeting of the company to be held on the day of

and at any adjournment thereof".

Signed this
day of

54. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

Corporations Acting by Representatives at Meetings.

55. Any corporation which is a member of the company may by resolution of its directors or other governing bodies authorise such person as it thinks fit to act as its representative at any meeting of the company or of any class of members of the company, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

Directors.

56. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association.

57. The remuneration of the directors shall from time to time be determined by the company in general meeting.

58. The qualification of a director shall be the holding of at least one share in the company.

Powers and Duties of Directors.

59. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not, by the Act, or by these articles, required to be exercised by the company in general meeting, subject, nevertheless, to any regulation of these articles, to the provisions of the Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

60. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term and at such remuneration (whether by way of salary, or commission, or participation in profits, or partly in one way and partly in another) as they may think fit, and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the rotation or retirement of directors; but his appointment shall be subject to determination ipso facto if he ceases from any cause to be a director, or if the company in general meeting resolve that his tenure of the office of managing director or manager be determined.

61. The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting.

62. The directors shall cause minutes to be made in books provided for the purpose—

(a) of all appointments of officers made by the directors;
(b) of the names of the directors present at each meeting of the directors and of any committee of the directors;
(c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors;

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.
63. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of a director and of the secretary, or such other person as the directors may appoint for the purpose; and that director and the secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Disqualification of Directors.

64. The office of director shall be vacated if the director—
(a) ceases to be a director by virtue of section 162 of the Act; or
(b) without the consent of the company in general meeting holds any other office of profit under the company except that of managing director or manager; or
(c) becomes bankrupt; or
(d) becomes prohibited from being a director by reason of any order made under section 237 or 290 of the Act; or
(e) is found lunatic or becomes of unsound mind; or
(f) resigns his office by notice in writing to the company; or
(g) is directly or indirectly interested in any contract with the company or participates in the profits of any contract with the company:

Provided, however, that a director shall not vacate his office by reason of his being a member of any corporation or firm which has entered into any contract with or done work for the company if he shall have declared the nature of his interest in manner required by section 167 of the Act; but the director shall not vote in respect of any such contract or work or any matter arising thereout, and if he does so vote his vote shall not be counted.

Rotation of Directors.

65. At the first ordinary general meeting of the company the whole of the directors shall retire from office, and at the ordinary general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.

66. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who become directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

67. A retiring director shall be eligible for re-election.

68. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto, and in default the retiring director shall be deemed to have been re-elected unless at such meeting it is resolved not to fill up such vacated office.

69. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

70. Any casual vacancy occurring in the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

71. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

72. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead. The person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

Proceedings of Directors.

73. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting
meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

74. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall when the number of directors exceeds three, be three, and when the number of directors does not exceed three, be two.

75. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

76. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

77. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.

78. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

79. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes, the chairman shall have a second or casting vote.

80. All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends and Reserve.

81. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

82. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

83. No dividend shall be paid otherwise than out of profits.

84. Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid to members according to the nominal amount of the shares held by them respectively.

85. The directors may, before recommending any dividend, set aside out of the profits of the company, such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalising dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company, or be invested in such investments (other than shares of the company), as the directors may from time to time think fit.

86. If several persons are registered as joint holders of any share, any one of them may give effectual receipts for any dividend or other moneys payable on or in respect of the share.

87. Any dividend may be paid by cheque or warrant sent through the post to the registered address of the member or person entitled thereto, or in the case of joint holders to any one of such joint holders at his registered address, or to such person and such address as the member or person entitled or such joint holders as the case may be may direct. Every such cheque or warrant shall be made payable to
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to the order of the person to whom it is sent, or to the order of such other person as the member or person entitled or such joint holders as the case may be may direct.

88. No dividend shall bear interest against the company.

Accounts.

89. The directors shall cause proper books of account to be kept with respect to—
   All sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
   All sales and purchases of goods by the company; and
   The assets and liabilities of the company.

90. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

91. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meeting.

92. The directors shall from time to time in accordance with section 142 of the Act, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance-sheets, and reports as are referred to in that section.

93. A copy of every balance-sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting together with a copy of the auditors' report shall not less than seven days before the date of the meeting be sent to all persons entitled to receive notices of general meetings of the company.

Audit.

94. Auditors shall be appointed and their duties regulated in accordance with sections 153, 154, and 155 of the Act.

Notices.

95. A notice may be given by the company to any member either by advertisement, personally, or by sending it by post to him to his registered address, or (if he has no registered address within the State of South Australia) to the address, if any, within the said State supplied by him to the company for the giving of notices to him.

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of 24 hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

Any notice given by advertisement under this Article shall in the case of a company having its registered office at Adelaide, be advertised once at least in each of two daily newspapers circulating in Adelaide, and in the case of a company having its registered office in any place other than in Adelaide be advertised in one daily newspaper circulating in Adelaide, and in one newspaper circulating in the locality wherein the registered office of the company is situated, and any notice given by advertisement shall be deemed to be duly given at noon on the first day on which the advertisement appears.

96. If a member has no registered address within the State of South Australia and has not supplied to the company an address within the said State for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighborhood of the registered office of the company, shall be deemed to be duly given at noon on the day on which the advertisement appears.

97. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register of members in respect of the share.

98. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives
of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, within the State of South Australia supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

99. Notice of every general meeting shall be given in some manner hereinbefore authorized to—

(a) every member except those members who (having no registered address within the State of South Australia) have not supplied to the company an address within the said State for the giving of notices to them, and also to—

(b) every person entitled to a share in consequence of the death or bankruptcy of a member who, but for his death or bankruptcy, would be entitled to receive notice of the meeting. No other persons shall be entitled to receive notices of general meetings.

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**TABLE C.**

**MEMORANDUM OF ASSOCIATION OF A LIMITED OR NO-LIABILITY COMPANY.**

Memorandum of Association of "The Australian Steam Packet Company, Limited" [or "The Ophir Gold Mining Company, No-Liability"].

1. The name of the company is "The Australian Steam Packet Company, Limited" [or "The Ophir Gold Mining Co., No-Liability."]

2. The objects for which the company is established are [set forth objects].

3. The liability of the members is limited [or the members take no liability, or the liability of ordinary members is limited, but the liability of the directors, or manager or managing director, is unlimited].

4. The share capital of the company is Two Hundred Thousand Pounds divided into one thousand shares of Two Hundred Pounds each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Dated the day of , 193

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**TABLE D. (Sections 13, 22, and 374.)**

**FORM OF MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND NOT HAVING A SHARE CAPITAL.**

**Memorandum of Association.**

1st. The name of the company is "The Kent School Association, Limited."

2nd. The objects for which the company is established are the carrying on a school for boys in the county of Kent and the doing all such other things as are incidental or conducive to the attainment of the above object.

3rd. The liability of the members is limited.

4th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one
one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs, charges, and expenses of winding-up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding Ten Pounds.

We, the several persons whose names and addresses are subscribed are desirous of being formed into a company, in pursuance of this memorandum of association.

Dated the day of , 19.

Names, Addresses, and Descriptions of Subscribers.

Witnesses to Signatures of Subscribers.

ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM OF ASSOCIATION.

Preliminary.

1. In these regulations:—

"The Act" means the Companies Act, 1934.

When any provision of the Act is referred to the reference is to such provision as modified by any statute for the time being in force.

Unless the context otherwise requires, expressions defined in the Act or any statutory modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined.

Members.

2. The number of members with which the company proposes to be registered is 500, but the directors may from time to time register an increase of members.

3. The subscribers to the memorandum of association and such other persons as the directors shall admit to membership shall be members of the company.

General Meetings.

4. The first general meeting shall be held at such time, not being less than one month nor more than three months after the incorporation of the company, and at such place as the directors may determine.

5. A general meeting shall be held once in every calendar year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the third month following that in which the anniversary of the company's incorporation occurs, and at such place as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

6. The above-mentioned general meeting shall be called ordinary general meetings. All other general meetings shall be called extraordinary general meetings.

7. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section 133 of the Act. If at any time there are not within the State of South Australia sufficient directors capable of acting to form a quorum, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Notice of General Meetings.

8. Subject to the provisions of section 136 (2) of the Act relating to special resolutions, seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day, and the hour of meeting and, in case of special business,
the general nature of that business shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but with the consent of all the members entitled to receive notice of some particular meeting, that meeting may be convened by such shorter notice and in such a manner as those members may think fit.

9. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any member shall not invalidate the proceedings at any meeting.

**Provisions at General Meetings.**

10. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

11. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members personally present shall be a quorum.

12. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

13. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

14. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman.

15. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

16. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least two members present in person, or by proxy entitled to vote, and unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

17. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

18. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meetings at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.

19. A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

**Votes of Members.**

20. Every member shall have one vote.

21. A member of unsound mind, or in respect of whom an order has been made, by any court having jurisdiction in lunacy, may vote, whether on a show of hands or
or on a poll, by his committee, curator bonis, or other person in the nature of a committee or curator bonis appointed by that court, and any such committee, curator bonis, or other person may, on a poll, vote by proxy.

22. No member shall be entitled to vote at any general meeting unless all moneys presently payable by him to the company have been paid.

23. On a poll votes may be given either personally or by proxy.

24. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation, either under the seal, or under the hand of an officer or attorney so authorised. A proxy need not be a member of the company.

25. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority, shall be deposited at the registered office of the company not less than forty-eight hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

26. An instrument appointing a proxy may be in the following form, or any other form which the directors shall approve:

"I, of being a member of the Company, Limited, hereby appoint of Company, Limited, as my proxy to vote for me and on my behalf at the [ordinary or extraordinary, as the case may be] general meeting of the company to be held on the day of and at any adjournment thereof."

Signed this day of

27. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

Corporations acting by Representatives at Meetings.

28. Any corporation which is a member of the company may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company and the person so authorised shall be entitled to exercise the same powers in behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

Directors.

29. The number of directors and the names of the first directors shall be determined in writing by a majority of the subscribers to the memorandum.

30. The remuneration of the directors shall from time to time be determined by the company in general meeting.

Powers and Duties of Directors.

31. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not, by the Act, or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulation of these articles, to the provisions of the Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

32. The directors shall cause minutes to be made in books provided for the purpose—

(a) of all appointments of officers made by the directors;

(b) of the names of the directors present at each meeting of the directors and of any committee of the directors;

(c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors;

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.
33. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of a director and of the secretary or such other person as the directors may appoint for the purpose; and that director and the secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Disqualification of Directors.

34. The office of director shall be vacated, if the director—
(a) without the consent of the company in general meeting holds any other office of profit under the company; or
(b) becomes bankrupt; or
(c) becomes prohibited from being a director by reason of any order made under sections 237 or 290 of the Act;  
(d) is found lunatic or becomes of unsound mind; or
(e) resigns his office by notice in writing to the company;  
(f) is directly or indirectly interested in any contract with the company and fails to declare the nature of his interest in manner required by section 167 of the Act.

A director shall not vote in respect of any contract in which he is interested or any matter arising thereout, and if he does so vote his vote shall not be counted.

Rotation of Directors.

35. At the first ordinary general meeting of the company the whole of the directors shall retire from office, and at the ordinary general meeting in every subsequent year, one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.

36. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall be determined by lot.

37. A retiring director shall be eligible for re-election.

38. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto, and in default the retiring director shall be deemed to have been re-elected unless at such meeting it is resolved not to fill up such vacated office.

39. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

40. Any casual vacancy occurring in the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

41. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

42. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead. The person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he was appointed was last elected a director.

Proceedings of Directors.

43. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.
44. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall, when the number of directors exceed three, be three and shall, when the number of directors does not exceed three, be two.

45. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

46. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but, if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

47. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

48. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

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50. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, be as valid as if every such person had been duly appointed and was qualified to be a director.

51. The directors shall cause proper books of account to be kept with respect to—

All sums of money received and expended by the company and the matter in respect of which the receipt and expenditure takes place;
All sales and purchases of goods by the company; and
The assets and liabilities of the company.

52. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

53. The directors shall from time to time determine whether, and to what extent, and at what times and places, and under what conditions or regulations, the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company, except as conferred by statute or authorised by the directors or by the company in general meeting.

54. The directors shall from time to time in accordance with section 142 of the Act, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance sheets and reports as are referred to in that section.

55. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting, together with a copy of the auditor’s report, shall not less than seven days before the date of the meetings be sent to all persons entitled to receive notices of general meetings of the company.

56. Auditors shall be appointed and their duties regulated in accordance with sections 153, 154, and 155 of the Act.

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Notices.

57. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address within the State of South Australia), to the address, if any, within the said State supplied by him to the company for the giving of notices to him.

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected at the expiration of 24 hours after the letter containing the same was posted.

58. If a member has no registered address within the State of South Australia, and has not supplied to the company an address within the said State for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company, shall be deemed to be duly given to him, in the day on which the advertisement appears.

59. Notice of every general meeting shall be given in some manner hereinbefore authorised to every member except those members who (having no registered address within the State of South Australia) have not supplied to the company an address within the said State for the giving of notices to them. No other persons shall be entitled to receive notices of general meetings.

Dated the day of 19.

Names, Addresses, and Description of Subscribers.

Witnesses to Signatures of Subscribers.

TABLE E. (Sections 22 and 374.)

Memorandum and Articles of Association of a Company Limited by Guarantee and having a Share Capital.

Memorandum of Association.

1st. The name of the company is "The Highland Hotel Company, Limited."

2nd. The objects for which the company is established are "the facilitating travelling in the Highlands of Scotland, by providing hotels and conveyances "by sea and land for the accommodation of travellers, and the doing all such "other things as are incidental or conducive to the attainment of the above object."

3rd. The liability of the members is limited.

4th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company, contracted before he ceases to be a member, and the costs, charges, and expenses of winding up the same and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding Twenty Pounds.

5th. The share capital of the company shall consist of Five Hundred Thousand Pounds, divided into five thousand shares of One Hundred Pounds each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Dated the day of 19.

Names
ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM OF ASSOCIATION.

1. The Articles of Association set out in the First Schedule to the Companies Act, 1934, shall be the articles of association of the company and apply to the company.

Dated the day of  , 19 .

TABLE F.
MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY HAVING A SHARE CAPITAL.

Memorandum of Association.

1st. The name of the company is "The Patent Stereotype Company."

2nd. The objects for which the company is established are "the working of a patent method of founding and casting stereotype plates, of which method John Smith, of Adelaide, is the sole patentee, and the doing of all such things as are incidental or conducive to the attainment of the above objects."

We, the several persons whose names are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Dated the day of  , 19 .

ARTICLES OF ASSOCIATION TO ACCOMPANY THE PRECEDING MEMORANDUM OF ASSOCIATION.

1. The share capital of the company is Two Thousand Pounds divided into twenty shares of One Hundred Pounds each.

2. The
2. The company may by special resolution—
   (a) increase the share capital by such sum to be divided into shares of such
       amount as the resolution may prescribe:
   (b) consolidate its shares into shares of a larger amount than its existing shares:
   (c) sub-divide its shares into shares of a smaller amount than its existing
       shares:
   (d) cancel any shares which at the date of the passing of the resolution have
       not been taken or agreed to be taken by any person:
   (e) reduce its share capital in any way.

3. The Articles of Table A set out in the First Schedule to the Companies
   Act, 1934 (other than Articles 30, 31, 32, 33, 34, 37, and 38) shall be deemed to be
   incorporated with these articles and shall apply to the company.

Dated the day of 19

---

SECOND SCHEDULE.

IMPLIED POWERS OF COMPANIES LIMITED BY SHARES.—SECTION 35.

The word "Company" in this table when not applied to the Company in respect
whereof the following powers are implied, shall be deemed to include any partnership
or other body of persons whether incorporated or not incorporated, and whether
domiciled in South Australia or elsewhere, and whether formed or to be formed.

1. To purchase, take on lease or on hire, or in exchange or otherwise to acquire,
in any manner howsoever, for such tenure and upon such conditions and terms as
may seem fit—
   (a) Any estates or interests in any lands, freehold, leasehold, or any other
       tenure, whether situate in the State of South Australia or elsewhere,
       and any easements, licences, rights, or privileges connected with or
       in relation to any real estate.
   (b) Any plant, machinery, apparatus, implements, tools, appliances, minerals,
       metals, ores, stone, timber, coal, clay, merchandise of any kind, ships,
       vessels, locomotives, rolling-stock, and personal property of every
       description whatsoever.
   (c) Any concessions, rights, options, licences, privileges, or advantages from
       any authorities, supreme, municipal, local, or otherwise.

2. To acquire or undertake the whole or any part of the business property and
   liabilities, of any persons or company carrying on any business which the company
   is authorised to carry on, or possessed of property suitable for the purposes of the
   company, and to undertake all or any part of the liabilities of any such person,
   firm, or company.

3. To enter into partnership or into any arrangement for the sharing profits,
   union of interests, co-operation, joint adventure, reciprocal concession or otherwise,
   or amalgamate with any person or company carrying on, or engaged in or about
to carry on or engage in any business or transaction which the company is
authorised to carry on or engage in or any business or transaction capable of being conducted
or entered upon so as to directly or indirectly benefit the company.

4. To apply for purchase, rent or acquire, maintain and prolong any patents,
   brevets d'inventions or inventions calculated to benefit or facilitate the operations
   of the company, use, exercise, develop, and to sell or grant licences in respect
   thereof or otherwise turn to account such patents, brevets d'inventions or inventions.

5. To subscribe for, purchase or otherwise acquire and hold, undertake, sell on
   commission, dispose of, and deal in shares, debentures, debenture stock, or securities
   of any other company or corporation or any Government or authority, supreme,
   municipal, local, or otherwise.

6. To
6. To carry on any business or operations which may seem to the company capable of being conveniently carried on with advantage or calculated, directly or indirectly, to enhance the value of or render profitable any of the company's property or rights for the time being.

7. To develop and turn to account any real or personal property acquired by, or in which the company is interested and in particular by laying out, constructing, improving, altering, pulling down, decorating, maintaining, furnishing, fitting up, and improving the same or any part thereof or any buildings or erections thereon and by fencing, draining, irrigating, clearing or planting any property owned, leased, or managed by the company, or in which it is otherwise interested, and thereon to erect, construct, and maintain any buildings, improvements, dams, drains, water schemes, roads, bridges, or works whatsoever.

8. To promote, form, subsidise, and establish any company or companies, corporation, or corporations for the purpose of acquiring all or any of the property, rights, and liabilities of the company, or for any other purposes which may seem directly or indirectly calculated to benefit this company.

9. To make loans or advances, undertake obligations and liabilities, and execute bonds and guarantees of any kind whether on behalf of the company or otherwise, and in particular for shareholders or for any persons or parties dealing with the company.

10. To invest and deal with the moneys of the company not immediately required upon such securities, and in such manner, as may from time to time be determined.

11. To discount and purchase bills, notes, and other negotiable securities, and to guarantee the payment of moneys and the performance of any contracts or obligations.

12. To raise or borrow money upon such terms and in such manner and upon such securities as the company shall think fit, and to secure the same or the repayment or performance of any debt, liability, contract, or engagement incurred or to be entered into by the Company in any way and in particular by the issue of debentures or debenture stock, or by giving mortgages, charges, or securities charged upon or over all or any of the company's real and personal property (both present and future) including its uncalled capital, and to purchase, pay off, or redeem any such securities.

13. To make, draw, accept, endorse, execute, and negotiate bills of exchange, promissory notes, drafts, bills of lading, bonds, guarantees, and all or any negotiable or transferable instruments.

14. To pay for any property rights or concessions acquired by the company, or any services rendered to the company, or satisfy any debt or liability of the company wholly or partly in cash or in debentures or in shares with or without preferred or deferred rights in respect of dividend or repayment of capital, or otherwise, or in securities or partly in one mode and partly in another or others, and generally in such form or manner as the company may deem advisable.

15. To obtain any Act of Parliament for enabling the company to carry any of its objects into effect, or for effecting any modification of the company's constitution or for any other purpose which may seem expedient, and to oppose any proceedings or applications which may seem calculated directly or indirectly to prejudice the company's interests.

16. To establish and form or assist in establishing and forming, and to support, aid, and join any association, union, or body calculated in any way to benefit the company, and to subscribe to the same such money as the company may think expedient, and to agree to be bound by the decision and actions of and to do or join in doing all such acts and things as may be decided upon by the governing authorities of any such association, union, or body in accordance with the rules or articles thereof.

17. To give donations, subsidies, or contributions to any association, union, or body, whether industrial, social, political, patriotic, or otherwise, and to establish and support or aid in the establishment and support of associations, institutions, funds, or trusts calculated to benefit employees or ex-employees of the company or the dependants or connections of such persons, and to grant pensions and allowances and to make payments towards insurance, and to subscribe or guarantee money for charitable or benevolent objects, or for any exhibition, or for any public, general, or useful object.
The Companies Act—1934.

18. To distribute any assets of the company among the members in specie, whether by way of dividends, bonus, or return of capital, or otherwise, subject, however to such sanction or confirmation (if any) as is required by law.

19. To amalgamate the business of the company with that of any other company, firm, or person in any manner and on any terms which may be considered advisable.

20. To pay all costs, charges, and expenses incurred or sustained in or about the formation, registration, and promotion of the company or which the company shall consider to be preliminary, including therein the cost of advertising, commissions for underwriting, brokerage, printing, and stationery.

21. To remunerate any person or company for services rendered or to be rendered in placing or assisting in placing or guaranteeing the placing of any of the shares in the company’s capital or any debentures, debenture stock, or other securities of the company, or in or about the formation or promotion of the company or the conduct of its business.

22. To sell or dispose of or grant options over the undertaking of the company or any part thereof for such consideration as the company may think fit, and in particular for shares, debentures, or securities of any other company having its objects altogether or in part similar to those of the company.

23. To relinquish, abandon, surrender or give up, with or without any consideration therefor, any rights, concessions, or other property of the company.

THIRD SCHEDULE (Sections 37, 38, and 374.)

FORM OF STATEMENT IN LIEU OF PROSPECTUS TO BE DELIVERED TO REGISTRAR BY A PROPRIETARY COMPANY OR A PRIVATE COMPANY ON BECOMING A PUBLIC COMPANY.

THE COMPANIES ACT, 1934.

Statement in lieu of Prospectus delivered for Registration by

[Insert the name of the Company.]  

Pursuant to sections 37 or 38 of the Companies Act, 1934.

Delivered for registration by

The nominal share capital of the Company ........................... £

Divided into .................................................. Shares of £ each.

Amount (if any) of above capital which consists of redeemable preference shares.

The date on or before which these shares are, or are liable, to be redeemed.

Names, descriptions and addresses of directors or proposed directors.

Amount of shares issued ................................. Shares.

Amount of commissions paid in connection therewith.

Amount of discount, if any, allowed on the issue of any shares, or so much thereof as has not been written off at the date of the statement.

Unless more than one year has elapsed since the date on which the Company was entitled to commence business—

Amount of preliminary expenses .......................... £

Amount paid to any promoter ........................... Name of promoter.  

Amount: £  

Consideration for the payment .............................. —

If the share capital of the Company is divided into different classes of shares, the right of voting at meetings of the Company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.
Number and amount of shares and debentures issued within the two years preceding the date of this statement as fully or partly paid up otherwise than for cash or agreed to be so issued at the date of this statement.

Consideration for the issue of those shares or debentures.

Names and addresses of Vendors of Property (1) purchased or acquired by the Company within the two years preceding the date of this statement or (2) agreed or proposed to be purchased or acquired by the Company.

Amount (in cash, shares, or debentures) paid or payable to each separate vendor.

Amount paid or payable in cash, shares, or debentures for any such property, specifying the amount paid or payable for goodwill.

Total purchase price £

Cash ... £
Shares ... £
Debentures ... £
Goodwill ... £

Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of business or entered into more than two years before the delivery of this statement).

Time and place at which the contracts or copies thereof may be inspected.

Names and addresses of the auditors of the Company.

Full particulars of the nature and extent of the interest of every director in any property purchased or acquired by the Company within the two years preceding the date of this statement or proposed to be purchased or acquired by the Company or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become or to qualify him as, a director, or otherwise for services rendered or to be rendered to the Company by him or by the firm.

Rates of the dividends (if any) paid by the Company in respect of each class of shares in the Company in each of the three financial years immediately preceding the date of this statement or since the incorporation of the Company whichever period is the shorter.

Particulars of the cases in which no dividends have been paid in respect of any class of shares in any of these years.

If any of the unissued shares or debentures are to be applied in the purchase of any business the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the three financial years immediately preceding the date of this statement, provided that in the case of a business which has been carried on for less than three years and the accounts of which have only been made up in
The Companies Act.—1934.

respect of two years or one year, the above require-
ment shall have effect as if references to two years
or one year, as the case may be, were substituted
for references to three years, and in any such case
the statement shall say how long the business to
be acquired has been carried on.
(Signatures of the persons above-named as directors or
proposed directors or of their agents authorised in
writing.)

Date

Note.—In this Form the expression "vendor" includes a vendor as defined in Part C. of
section 50 of this Act, and the expression "financial year" has the meaning assigned to it in
that Part of the said section.

FOURTH SCHEDULE. (Section 57.)

Form of Statement in lieu of Prospectus to be delivered to Registrar by
a company which does not issue a Prospectus or which does not go to
Allotment on a Prospectus issued.

THE COMPANIES ACT, 1934.

Statement in lieu of Prospectus delivered for registration by
[Insert the name of the company.]

Pursuant to section 57 of the Companies Act, 1934.
Delivered for registration by
The nominal share capital of the Company. £
Divided into Shares of £ each.

Amount (if any) of above capital which consists of
redeemable preference shares.
The date on or before which these shares are, or are
liable to be redeemed.
Names, descriptions and addresses of directors or
proposed directors.
If the share capital of the Company is divided into
different classes of shares, the right of voting at
meetings of the Company conferred by, and the
rights in respect of capital and dividends attached to,
the several classes of shares respectively.
Number and amount of shares and debentures agreed
to be issued as fully or partly paid up otherwise than
in cash.
The consideration for the intended issue of those shares
and debentures.

Names and addresses of vendors of property purchased
or acquired, or proposed to be purchased or acquired
by the company.
Amount (in cash, shares, or debentures) payable to
each separate vendor.
Amount (if any) paid or payable (in cash or shares or
debentures) for any such property, specifying
amount (if any) paid or payable for goodwill.

Total purchase price £
Cash £
Shares £
Debentures £

Goodwill £

Amount
The Companies Act.—1934.

Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the Company; or

Rate of the commission ..........................

The number of shares (if any), which persons have agreed for a commission to subscribe absolutely.

Estimated amount of preliminary expenses .........

Amount paid or intended to be paid to any promoter.

Consideration for the payment ........................

Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the Company or entered into more than two years before the delivery of this statement).

Time and place at which the contracts or copies thereof may be inspected.

Names and addresses of the auditors of the Company (if any).

Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the Company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the Company.

If it is proposed to acquire any business, the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the three financial years immediately preceding the date of this statement provided that in the case of a business which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one year the above requirement shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years, and in any such case the statement shall say how long the business to be acquired has been carried on.

(Signatures of the persons above-named as directors or proposed directors, or of their agents authorised in writing.)

Date

Note.—In this Schedule the expression "vendor" includes a vendor as defined in Part C of section 50 of this Act, and the expression "financial year" has the meaning assigned to it in that Part of the said section.
FIFTH SCHEDULE. (Section 129.)

FORM A.

FORM OF ANNUAL RETURN OF A COMPANY HAVING A SHARE CAPITAL.

Annual Return of the Company, Limited, made up to the 30th day of September, 19

The address of the registered office of the Company is as follows:—

<table>
<thead>
<tr>
<th>Summary of Share Capital and Shares.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nominal Share Capital £</td>
</tr>
<tr>
<td>divided £</td>
</tr>
<tr>
<td>into * shares of each.</td>
</tr>
<tr>
<td>£</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Total number of shares taken up* to the day of 19</td>
</tr>
<tr>
<td>being the date of the return (which number must agree with the total shown in the list as held by existing members).</td>
</tr>
<tr>
<td>Number of shares issued subject to payment wholly in cash.</td>
</tr>
<tr>
<td>Number of shares issued as fully paid up otherwise than in cash.</td>
</tr>
<tr>
<td>Number of shares issued as partly paid up to the extent of per share otherwise than in cash.</td>
</tr>
<tr>
<td>†Number of shares (if any) issued at a discount.</td>
</tr>
<tr>
<td>Total amount of discount on the issue of shares which has not been written off at the date of this Return. £</td>
</tr>
<tr>
<td>‡There has been called up on each of shares.</td>
</tr>
<tr>
<td>††There has been called up on each of shares.</td>
</tr>
<tr>
<td>†††There has been called up on each of shares.</td>
</tr>
<tr>
<td>§Total amount of calls received, including payments on application and allotment. £</td>
</tr>
<tr>
<td>Total amount (if any) agreed to be considered as paid on shares which have been issued as fully paid up otherwise than in cash. £</td>
</tr>
<tr>
<td>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. £</td>
</tr>
<tr>
<td>Total amount of calls unpaid £</td>
</tr>
<tr>
<td>Total amount of the sums (if any) paid by way of commission in respect of any shares or debentures or allowed by way of discount in respect of any debentures since the date of the last Return. £</td>
</tr>
<tr>
<td>Total number of shares forfeited £</td>
</tr>
<tr>
<td>Total amount paid (if any) on shares forfeited £</td>
</tr>
<tr>
<td>Total amount of shares for which share warrants to bearer are outstanding £</td>
</tr>
<tr>
<td>Total amount of share warrants to bearer issued and surrendered respectively since the date of the last Return. £</td>
</tr>
<tr>
<td>Number of shares comprised in each share warrant to bearer.</td>
</tr>
</tbody>
</table>

Total
Total amount of the indebtedness of the Company in respect of all mortgages and charges which, or a list of which, are required to be registered with the Registrar of Companies under the Companies Act, 1934.

Date of holding last annual meeting.

List of holders of debentures which do not constitute a charge on assets of company, and same particulars as required in relation to shares.

* Where there are shares of different kinds or amounts (e.g., Preference and Ordinary or £1 and 1s.) state the number and nominal values separately.
† Where various amounts have been called, or there are shares of different kinds, state them separately.
§ Include what has been received on forfeited as well as on existing shares.

A list of the names and addresses of shareholders must accompany this return.

Copy of last audited Balance-sheet of the Company.

NOTE.—Except where the Company is a Private Company or a Proprietary Company, this Return must include a written copy, certified by a Director or by the Manager or Secretary of the Company to be a true copy, of the last balance-sheet which has been audited by the Company’s auditors (including every document required by law to be annexed thereto, together with a copy of the report of the auditors thereon (certified as aforesaid), and if any such balance-sheet is in a foreign language there must also be annexed to it a translation thereof in English certified in the prescribed manner to be a correct translation. If the said last balance-sheet did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance-sheets there must be made such additions to and corrections in the said copy as would have been required to be made in the said balance-sheet in order to make it comply with the said requirements, and the fact that the said copy has been so amended must be stated thereon.

Private Company.

Certificates to be given by a Private Company.

A. “I certify that the Company has not since the date of the *last Annual Return* issued any invitation to the public to subscribe for any shares, stock, bonds, or "debentures of the Company."

(Signature)

(State whether Director or Secretary.)

* Strike out the words “last Annual Return” and substitute therefor the words “Incorporation of the Company,” or “Commencement of The Companies Act, 1934.”

Proprietary Company.

Certificates to be given by a Proprietary Company.

A. “I certify that the Company has not since the date of the *last Annual Return* issued any invitation to the public to subscribe for any shares, stock, bonds, or "debentures of the Company."

(Signature)

(State whether Director or Secretary.)

* Strike out the words “last Annual Return” and substitute therefor the words “Incorporation of the Company,” or “Commencement of The Companies Act, 1934.”

B. Should the number of members of the Company exceed fifty the following certificate is also required:—

“I certify that the excess of members of the Company above fifty consists wholly "of persons who are in the employment of the Company and/or of persons "who, having been formerly in the employment of the Company were while "in such employment, and have continued after the determination of such "employment to be, members of the Company.”

(Signature)

(State whether Director or Secretary.)

The Return must be signed at the end by a Director or by the Manager or Secretary of the Company.

Delivered for filing by

Particulars
Particulars of the "Directors of the Company, Limited, at the date of the Annual Return.

<table>
<thead>
<tr>
<th>† The present Christian Name or Surname.</th>
<th>Any former Christian Name or Surname.</th>
<th>Nationality.</th>
<th>Nationality of Origin (if other than the present Nationality).</th>
<th>Usual Residential Address.</th>
<th>‡ Other Business Occupation (if any). If None, State so.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* "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 an individual who has no business occupation but holds any other directorship or directorships particulars of that directorship or of some one of those directorships must be entered.

List of persons holding shares in the Company Limited, on the day of 19 , and of persons who have held shares therein at any time since the date of the last Return, or (in the case of the first Return) of the incorporation of the Company, showing their names and addresses, and an account of the shares so held.

N.B.—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.

The word shares includes unsecured debentures, bonds and stock.

<table>
<thead>
<tr>
<th>Folio in Register Ledger containing Particulars.</th>
<th>Names, Addresses, and Occupations.</th>
<th>*Number of Shares held by Existing Members at Date of Return.†</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(Signature) ........................................ (State whether Director or Manager or Secretary.)

* 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 must be subdivided so that the number of each class held, or transferred, may be shown separately. Where any shares have been converted into Stock the amount of Stock held by each member must be shown.

† The date of registration of each transfer should be given as well as the number of shares transferred on each date. The particulars should be placed opposite the name of the transferor, and not opposite that of the transferee, but the name of the transferee may be inserted in the "Remarks" column immediately opposite the particulars of each transfer.
Balance sheet of

Companies Act, 1934.

(being a banking company)

at

(Including London Branch at

<table>
<thead>
<tr>
<th>Drs.</th>
<th>£ s. d.</th>
<th>£ s. d.</th>
<th>£ s. d.</th>
</tr>
</thead>
<tbody>
<tr>
<td>To Capital paid up (viz.:-Preference shares paid in cash to ........................................... .)</td>
<td>By coin, bullion, and cash in hand or at bankers ........</td>
<td>Government, municipal, and other public stocks and funds other debentures ........</td>
<td>Bills and remittances in transit Notes and bills of other banks .... Balance due from other banks .... Stamps ........</td>
</tr>
<tr>
<td>Ordinary shares paid up to ............... per share)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Notes in circulation</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bills in circulation</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Government deposits</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Not bearing interest</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bearing interest</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other deposits (and interest accrued)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Not bearing interest</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bearing interest</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Balances due to other banks</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contingent liabilities as per contra-</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Debentures or debenture stock outstanding</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Debts due on judgment</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Debts due and secured otherwise than by debentures or debenture stock</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amounts due on contracts not included in any of the above-mentioned items</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Any other liabilities</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reserve fund</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Profit and loss</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Real estate, consisting of bank premises</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other real estate</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Furniture and fittings</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bills discounted and other advances, after provision for bad or doubtful debts</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Money due to bank other than as above mentioned, after provision for bad or doubtful debts</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Liabilities of customers and others in respect of contingent liabilities, as per contra</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Shares in other companies</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other assets</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

I (manager or public officer or by whatever designation the principal officer is styled) do solemnly and sincerely declare—

That the reserve fund (if any) and accumulated profits (if any) are used in the business (or how otherwise).

That the accompanying statement and balance-sheet of the bank is, to the best of my knowledge and belief true in every particular.

(Names, addresses, and occupations of the persons who are the directors of the Company at the date of the statement.)

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1915.

Declared at in the State of South Australia, this day of

We of being directors of the do hereby certify that in our opinion the above balance-sheet is true and correct, and is drawn up so as to exhibit a true and correct view of the state of the company’s affairs.

Dated at this day of
### Balance-sheet at
**Liabilities.**

<table>
<thead>
<tr>
<th>Item</th>
<th>£</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Capital</em></td>
<td></td>
</tr>
<tr>
<td>Reserves (for particulars of specific investments, if any, see contra)</td>
<td></td>
</tr>
<tr>
<td>Profit and loss</td>
<td></td>
</tr>
<tr>
<td>Debentures</td>
<td></td>
</tr>
<tr>
<td>Mortgages</td>
<td></td>
</tr>
<tr>
<td>Deposits with accrued interest</td>
<td></td>
</tr>
</tbody>
</table>
| Sundry creditors—         
  Amounts owing on open accounts                                   |      |
  Amounts owing on judgment.                                        |      |
| Bills and notes payable                                            |      |
| Liabilities not otherwise enumerated                               |      |
| Contingent liabilities                                             |      |

### Assets.

<table>
<thead>
<tr>
<th>Item</th>
<th>£</th>
</tr>
</thead>
<tbody>
<tr>
<td>Government, municipal, and other public debentures or stock</td>
<td></td>
</tr>
<tr>
<td>Freehold property, showing the provision made for depreciation and ultimate extinction of the asset</td>
<td></td>
</tr>
<tr>
<td>Plant and machinery</td>
<td></td>
</tr>
<tr>
<td>Fixtures, fittings, and furniture</td>
<td></td>
</tr>
<tr>
<td>Stock in trade</td>
<td></td>
</tr>
<tr>
<td>Sundry debtors (after making provision for all debts considered bad or doubtful)</td>
<td></td>
</tr>
<tr>
<td>Bills and notes receivable (after making provision for all debts considered bad or doubtful)</td>
<td></td>
</tr>
<tr>
<td>Shares in other companies</td>
<td></td>
</tr>
<tr>
<td>Amount at credit with bankers</td>
<td></td>
</tr>
<tr>
<td>Cash in hand</td>
<td></td>
</tr>
<tr>
<td>Other items (specifying them)</td>
<td></td>
</tr>
<tr>
<td>Contingent assets</td>
<td></td>
</tr>
</tbody>
</table>

---

I (manager or public officer, or by whatever designation the principal officer is styled) do solemnly and sincerely declare—

That the reserves (if any) and accumulated profits (if any) are used in the business (or how otherwise).

That the accompanying statement and balance-sheet of the company is, to the best of my knowledge and belief, true in every particular.

That the names, addresses, and occupations of persons who are the directors of the company at the date of this statement are—

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1915.

Declared at in the State of South Australia, this day of ,

We, of , and of , being the directors of the Limited, do hereby certify that, in our opinion, the above balance-sheet is true and correct, and is drawn up so as to exhibit a correct view of the state of the company’s affairs.

Dated at this day of

* Distinguish between the various classes of shares issued, show the amount or amounts called up thereon, and the arrears of calls unpaid, and specify what amount of capital has been paid up in money, and what amount otherwise than in money.

† The particulars of specific investments (if any) of Reserves must be set out clearly.

‡ Basis of value, whether at cost price, market price, or otherwise to be stated.

A statement of Profit and Loss shall be annexed to and form part of the Balance-sheet.

**Note.**—The following assets may be grouped together;—Freehold property may be grouped with leasehold property; plant and machinery may be grouped with fixtures, fittings, and furniture; sundry debtors may be grouped with bills and notes receivable and (or) shares in other companies; Government, municipal, and other public debentures or stock may be grouped with amount at credit with bankers and cash in hand. Any item in the balance-sheet may be grouped as the Registrar in each particular case from time to time in writing approves.
**The Companies Act—1934.**

**SIXTH SCHEDULE (Section 130).**

**FORM OF ANNUAL RETURN OF COMPANY NOT HAVING A SHARE CAPITAL.**

Annual Return of the Company, Limited, made up to the day of ___________, 19

The address of the registered office of the Company is as follows:—

The total amount of the indebtedness of the Company in £

respect of all mortgages and charges which, or a list of which, are required to be registered with the Registrar of Companies under the Companies Act, 1934.

Particulars of the *directors of the Company, Limited, at the date of the Annual Return.*

<table>
<thead>
<tr>
<th><em>The present Christian Name or Surname</em></th>
<th>Any former Christian Name or Surname</th>
<th><strong>Nationality, Nationality of Origin (if other than the present Nationality).</strong></th>
<th><strong>Usual Residential Address.</strong></th>
<th><em>Other Business Occupation (if any). If None, State so.</em></th>
</tr>
</thead>
</table>

* "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 an individual who has no business occupation but holds any other directorship or directorships particulars of that directorship or of some one of those directorships must be entered.

**Copy of last audited Balance-sheet of the Company.**

**Note.**—This Return must include a written copy, certified by a Director or by the Manager or Secretary of the Company to be a true copy, of the last balance-sheet which has been audited by the Company’s auditors (including every document required by law to be annexed thereto), together with a copy of the report of the auditors thereon (certified as aforesaid), and if any such balance-sheet is in a foreign language there must also be annexed to it a translation thereof in English certified in the prescribed manner to be a correct translation. If the said last balance-sheet did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance-sheets, there must be made such additions to and corrections in the said copy as would have been required to be made in the said balance-sheet, in order to make it comply with the said requirements, and the fact that the said copy has been so amended must be stated thereon.

The Return must be signed at the end by a Director or by the Manager or Secretary of the Company.

Delivered for filing by—

List of persons who, on the 31st day of March, 19, were members of Company and of persons who since the date of the last return (or in case of first Return since date of incorporation) have ceased to be members.

<table>
<thead>
<tr>
<th>Folio in Register of Members.</th>
<th>Names, Addresses, and Occupations.</th>
<th>Date when Became Member.</th>
<th>Date when Ceased to be Member and How.</th>
<th>Remarks.</th>
</tr>
</thead>
</table>
SEVENTH SCHEDULE.

FORM OF STATEMENT REFERRED TO IN SECTION 152 OF ACT.

THE COMPANIES ACT, 1934.

Return made pursuant to Section 152.

The liability of the members is [limited], or as the case may be.

* The capital of the company is divided into shares of each.

The number of shares issued is

Calls to the amount of pounds per share have been made under which the sum of pounds has been received.

That the liabilities of the company on the first day of February [or August] last were—

Debts owing to sundry persons by the company:
- On judgments £
- On specialties £
- On notes or bills £
- On simple contracts £
- On estimated liabilities £

That the assets of the company on that day were—
- Government securities [stating them] £
- Bills of exchange and promissory notes £
- Cash at the bankers £
- Other securities and assets £

* If the company has no capital divided into shares, the portion of the statement relating to capital and shares must be omitted.
† If shares are of different types distinguish.

I [Manager, or as the case may be] do solemnly and sincerely declare that the above return is true in every particular; and I make this declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act, 1915.

EIGHTH SCHEDULE.

Summons under section 156—

In the matter of the Companies Act, 1934—

And

In the matter of

To

you are required to attend at

on

the day of , 19 , at

o'clock in the noon for the purpose of answering all questions I may put to you in relation to the above-named Company and its business.

And you are required to bring with you and produce to me at the time and place aforesaid and all other deeds, documents, and papers in your custody or power relating to the said Company or business.

Dated the day of , 19 .

Inspector.

N.B.—If you fail to attend the place and time aforesaid or to bring with you the deeds, documents, or papers above-mentioned you will be liable to a penalty of £50 for each offence.

NINTH
NINTH SCHEDULE. (Section 276.)

Provisions which do not apply in the case of a winding-up subject to supervision of the Court.

Meetings of creditors and contributories. [S. 207.]
Statement of Companies affairs to be submitted to Official Liquidator. [S. 208.]
Report by Official Liquidator. [S. 209.]
Power of Court to appoint Liquidator and appointment and powers of provisional Liquidator. [S. 206.]
General provisions as to Liquidators. [S. 210 except sub-s. (8).]
Exercise and control of Liquidators' powers. [S. 214.]
Books to be kept by Liquidator. [S. 215.]
Payments of Liquidator into bank. [S. 216.]
Audit of Liquidators' accounts. [S. 217.]
Release of Liquidators. [S. 219.]
Meeting of creditors and contributories to determine whether Committee of Inspection shall be appointed. [Ss. 207 and 220.]
Constitution and proceedings of Committee of Inspection. [S. 221.]
Appointment of Special Manager. [S. 230.]
Power to order public examination of promoters, directors, &c. [S. 236.]
Power to restrain fraudulent persons from managing companies. [S. 237.]
Delegation to Liquidator of certain powers of Court. [S. 240.]

TENTH SCHEDULE (Section 321.)

Form of Certificate to Documents.

Certificate for Individual Documents.

Correct for the purposes of the Companies Act, 1934, relating to—

Companies

Dated the day of , 19

* Set out the type or class of Company to which the certificate relates, such as "Limited," "No-Liability," "Proprietary," "Private," "Guarantee," "Unlimited," "Company limited by Guarantee and having a Share Capital," "Company required to be registered under Part XII.," "Company applying to be registered under Part X. as a Company with Limited Liability," or as the case may be.

Certificate for Group of Documents.

The following documents filed herewith, comprising—

(Set out same identifying by description and date)

are correct, &c., as in form above.

ELEVENTH SCHEDULE.

Form A.

The Companies Act, 1934.

I, the undersigned being the duly appointed Agent of [here state the name of the company or society] do hereby solemnly and sincerely declare that the said company proposes carrying on business in South Australia.

The name of the agent of the said company or society is [here state full Christian name and Surname].

I am the person named in the memorandum of appointment dated by the Company Limited filed herewith.

The address of the said agent in South Australia is at [here state the city, town, or place where situate, and the name of street and number of building, if any].

The
The Companies Act.—1934.

The name of the company or society is [here state name].
The place where the said company or society was formed or incorporated is [state name of street, &c.] And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act, 1915.

Declared at before me,

Signature—

day of , 19 ,

A Justice of the Peace.

FORM B.
THE COMPANIES ACT, 1931.

This is to certify that a company [or society] called the [here state name] formed or incorporated in [state name of street, &c.] and carrying on business in South Australia, did, on the day of , 19 , duly register under Part XII. of the Companies Act, 1934.
The name and place of abode or business of the person appointed by such company [or society] as agent to carry on its business in South Australia, his address in South Australia is situated at [state name of street, &c.]
The registered office of the said company [or society] is [state name of street, &c.]

Given under my hand this day of , 19 .

Registrar.

FORM C.
THE COMPANIES ACT, 1934.

It is hereby certified that the within-written document has been proved to the satisfaction of to be a true copy of the original [here describe the document as “Memorandum of Association,” “Articles of Association,” or as the case may require] of the company [Limited] and that the day of is the date upon which the said original was filed with the Registrar.

Dated this day of , 19 .

Registrar.

TWELFTH SCHEDULE (Section 2).
ACTS REPEALED.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>116 of 1878</td>
<td>Supreme Court Act, 1878</td>
<td>S. 6, 1., so far as it relates to Companies</td>
</tr>
<tr>
<td>557 of 1892</td>
<td>The Companies Act, 1892</td>
<td>The whole</td>
</tr>
<tr>
<td>576 of 1893</td>
<td>The Companies Amendment Act, 1893</td>
<td>The whole</td>
</tr>
<tr>
<td>914 of 1906</td>
<td>The Companies Act Further Amendment Act</td>
<td>The whole</td>
</tr>
<tr>
<td>1619 of 1924</td>
<td>Companies (Mortgages, Charges and Debentures) Act, 1924</td>
<td>The whole</td>
</tr>
<tr>
<td>1754 of 1926</td>
<td>Companies Amendment Act, 1926</td>
<td>The whole</td>
</tr>
<tr>
<td>1853 of 1928</td>
<td>Companies Act Amendment Act, 1928</td>
<td>The whole</td>
</tr>
</tbody>
</table>
### Table of Fees to be Paid to Registrar

#### Fees Payable by Companies having a Share Capital.

<table>
<thead>
<tr>
<th>Description</th>
<th>£ s. d.</th>
</tr>
</thead>
<tbody>
<tr>
<td>For registration of a company whose nominal capital does not exceed £2,000</td>
<td>5 0 0</td>
</tr>
<tr>
<td>For registration of a company whose nominal capital exceeds £2,000, the above fee of £5, with the following additional fees, regulated according to the amount of nominal capital, that is to say—</td>
<td></td>
</tr>
<tr>
<td>(1) For every £1,000 of nominal capital or part of £1,000 after the first £2,000 up to £5,000</td>
<td>0 10 0</td>
</tr>
<tr>
<td>(2) For every £1,000 of nominal capital or part of £1,000 after the first £5,000 up to £100,000</td>
<td>0 5 0</td>
</tr>
<tr>
<td>(3) For every £1,000 of nominal capital or part of £1,000 after the first £100,000</td>
<td>0 2 0</td>
</tr>
<tr>
<td>For registration of any increase of share capital made after the first registration of the company, the same fee per £1,000 as would have been payable if the increased share capital had formed part of the original share capital at the time of registration: Provided that no company shall be liable to pay in respect of nominal share capital on registration or afterwards any greater amount of fees than £200, taking into account in the case of fees payable on an increase of share capital after registration, the fees paid on registration.</td>
<td></td>
</tr>
<tr>
<td>For registering any document hereby required or authorised to be registered other than the Memorandum of Association</td>
<td>0 5 0</td>
</tr>
<tr>
<td>For making a record of any fact authorised or required to be recorded by the Registrar of Companies, or receiving any notice or other document required to be given to or left or filed with the Registrar</td>
<td>0 5 0</td>
</tr>
<tr>
<td>On a change of name, for registration of the new name, and issue of certificate thereon</td>
<td>3 0 0</td>
</tr>
<tr>
<td>Upon filing notice of the winding-up or dissolution of a company</td>
<td>0 15 0</td>
</tr>
<tr>
<td>For every certificate of incorporation of company</td>
<td>0 10 0</td>
</tr>
<tr>
<td>For every other certificate by the Registrar not provided by this schedule</td>
<td>0 5 0</td>
</tr>
<tr>
<td>For inserting in Government Gazette any statutory notice. The cost of same.</td>
<td></td>
</tr>
<tr>
<td>For the production of any document in the Supreme Court</td>
<td>0 15 0</td>
</tr>
<tr>
<td>For the production of any document in the Local Court</td>
<td>0 10 0</td>
</tr>
<tr>
<td>For the production of any document in the Police Court</td>
<td>0 12 9</td>
</tr>
<tr>
<td>For the production of any document in the Lands Titles Office</td>
<td>0 12 0</td>
</tr>
<tr>
<td>Registration of a company under Part XII. whose nominal capital does not exceed £5,000</td>
<td>5 0 0</td>
</tr>
<tr>
<td>(1) For every £1,000 of nominal capital or part of £1,000 after the first £5,000 up to £20,000</td>
<td>0 5 0</td>
</tr>
<tr>
<td>(2) For every £1,000 of nominal capital or part of £1,000 after the first £20,000</td>
<td>0 1 0</td>
</tr>
<tr>
<td>For registration of any increase of nominal capital made after the first registration of the company, the same fee per £1,000 as would have been payable if the increased capital had formed part of the original nominal capital at the time of registration,</td>
<td></td>
</tr>
<tr>
<td>Provided that no foreign company shall be liable to pay in respect of nominal share capital any greater amount of fees than £5.</td>
<td></td>
</tr>
</tbody>
</table>

### Fees
Fees Payable by a Company not having a Share Capital.

For registration of a company whose number of members, as stated in the Articles of Association, does not exceed 20 ................................. 3 0 0

For registration of a company whose number of members, as stated in the Articles of Association, exceeds 20, but does not exceed 100, but is not stated to be unlimited, a fee of £6 5s. (with an additional 6s. for every 50 members or less number than 50 members after the first 100) ............................................ 6 5 0

Provided that no company shall be liable to pay on the whole a greater fee than £40 in respect of its number of members, taking into account the fee paid on the first registration of the company 40 0 0

The registration of a company in which the number of members is stated in the Articles of Association to be unlimited .............................. 40 0 0

For a registration of any increase in the number of members made after the registration of the company in respect of every 50 members or less than 50 members of such increase ........................... 0 6 0

Other Fees

For reserving any name under section 27 ........................................ 0 10 0

For every licence under section 28 .................................................. 1 1 0

For registering any mortgage or charge over property of a company—

(a) Where the amount does not exceed £200 ................................. 1 0 0

(b) Where the amount exceeds £200 or where no amount is stated ......... 2 0 0

For registering particulars of a series of debentures—

(a) Where the amount does not exceed £200 ................................. 1 0 0

(b) Where the amount exceeds £200 ........................................... 2 0 0

For registering particulars of each series of debentures where more than one issue in the series .................................................. 0 10 0

For entry on register of mortgages of memorandum of satisfaction .... 3 10 0

Upon the forwarding, delivery, lodgment, registration, or filing of any notice, summary, list, statement, statutory declaration, balance-sheet, or other document (other than a Memorandum of Association or Memorandum of Registration) required or authorised to be lodged, registered, deposited or filed with or by the Registrar in connection with any company, society, or association—

(a) If within the period (if any) provided by law ............................ 0 5 0

(b) If within one month after the period prescribed by law............. 1 5 0

(c) If after more than one month after the period prescribed by law..... 5 5 6

The Registrar may, if satisfied that just cause exists for so doing, reduce the fees prescribed in paragraphs (b) and (c) last preceding, but in no case shall either of such fees be reduced below 5s. and 10s. respectively.

For inspection of any document filed with or file of the Registrar .... 9 2 6

For a copy or extract of any document kept by the Registrar relating to companies, certified by the Registrar—

(a) If five folios of 72 words or under ....................................... 0 5 0

(b) If exceeding five folios, per folio ....................................... 0 0 9

Examining a written or printed copy and certifying same by Registrar—

(a) If 10 folios of 72 words or under ....................................... 0 5 0

(b) If exceeding 10 folios, per folio ....................................... 0 6 6

For doing or causing to be done any act referred to in and under section 309 .................................................. 2 2 0

Adelaide: By authority, Hanson Weir, Government Printer, North Terrace.