

SUPPLEMENT
TO THE
Ceylon Government Gazette
PART II.

No. 7,426 — FRIDAY, OCTOBER 24, 1924.

DRAFT ORDINANCE.

MINUTE.

The following Draft of a proposed Ordinance is published for general information :—

**An Ordinance to provide for the Incorporation, Regulation,
and Winding up of Trading Companies and other
Associations.**

TABLE OF SECTIONS.

Sections.

1 Short title and commencement.

Interpretation, &c.

2 Interpretation.

PART I.

CONSTITUTION AND INCORPORATION.

Prohibition of Large Partnerships.

3 Prohibition of partnerships exceeding certain number.

Memorandum of Association.

- 4 Mode of forming incorporated company.
- 5 Memorandum of company limited by shares.
- 6 Memorandum of company limited by guarantee.
- 7 Memorandum of unlimited company.
- 8 Stamp and signature of memorandum.
- 9 Restriction on alteration of memorandum.
- 10 Name of company and change of name.
- 11 Alteration of objects of company.

Articles of Association.

- 12 Registration of Articles.
- 13 Application of table A.
- 14 Form, stamp, and signature of articles.
- 15 Alteration of articles by special resolution.
- 16 Prohibition of alteration of articles restricting foreign interests in companies except with consent of Governor in Executive Council.

General Provisions.

- 17 Effect of memorandum and articles.
- 18 Registration of memorandum and articles.
- 19 Effect of registration.
- 20 Conclusiveness of certificate of incorporation.
- 21 Affidavit by proctor as to compliance with requirements as to registration, &c.
- 22 Copies of memorandum and articles to be given to members

Associations not for Profit.

- 23 Power to dispense with "limited" in name of charitable and other company.

Companies limited by Guarantee.

- 24 Provision as to companies limited by guarantee.

PART II.

DISTRIBUTION AND REDUCTION OF SHARE CAPITAL, REGISTRATION OF UNLIMITED COMPANY AS LIMITED, AND UNLIMITED LIABILITY OF DIRECTORS.

Distribution of Share Capital.

Sections.

- 25 Nature of shares.
- 26 Certificate of shares or stock.
- 27 Definition of member.
- 28 Register of members.
- 29 Annual list of members and summary.
- 30 Trusts not to be entered on register.
- 31 Registration of transfer at request of transferor.
- 32 Transfer by personal representative.
- 33 Inspection of register of members.
- 34 Power to close register.
- 35 Power of court to rectify register.
- 36 Register to be evidence.
- 37 Power for company to keep register out of Colony.
- 38 Regulations as to local register.
- 39 Issue and effect of share warrants to bearer.
- 40 Forgery, personation, unlawfully engraving plates, &c.
- 41 Power of company to arrange for different amounts being paid on shares.
- 42 Power to return accumulated profits in reduction of paid up share capital.
- 43 Power of company limited by shares to alter its share capital.
- 44 Notice to Registrar of consolidation of share capital, conversion of shares into stock, &c.
- 45 Effect of conversion of shares into stock.
- 46 Notice of increase of share capital or of members.
- 47 Re-organization of share capital.

Reduction of Share Capital.

- 48 Special resolution for reduction of share capital.
- 49 Application to court for confirming order.
- 50 Addition to name of company of "and reduced."
- 51 Objections by creditors, and settlement of list of objecting creditors.
- 52 Order confirming reduction.
- 53 Registration of order and minute of reduction.
- 54 Minute to form part of memorandum.
- 55 Liability of members in respect of reduced shares.
- 56 Penalty on concealment of name of creditor.
- 57 Publications of reasons for reduction.
- 58 Increase and reduction of share capital in case of a company limited by guarantee having a share capital.

Registration of Unlimited Company as Limited.

- 59 Registration of unlimited company as limited.
- 60 Power of unlimited company to provide for reserved share capital on registration.

Reserved Liability of Limited Company.

- 61 Reserved liability of limited company.

Unlimited Liability of Directors.

- 62 Limited company may have directors with unlimited liability.
- 63 Special resolution of limited company making liability of directors unlimited.

PART III.

MANAGEMENT AND ADMINISTRATION.

Office and Name.

- 64 Registered office of company.
- 65 Publication of name by a limited company.

Meetings and Proceedings.

- 66 Annual general meeting.
- 67 First statutory meeting of company.
- 68 Convening of extraordinary general meeting on requisition.
- 69 Provisions as to meetings and votes.
- 70 Representation of companies at meetings of other companies of which they are members.
- 71 Definitions of extraordinary and special resolution.
- 72 Registration and copies of special resolution.
- 73 Minutes of proceedings of meetings and directors.

Appointment, Qualification, &c., of Directors.

Sections.

- 74 Restrictions on appointment or advertisement of director.
- 75 Qualification of director.
- 76 Validity of acts of directors.
- 77 List of directors to be sent to Registrar.

Contracts, &c.

- 78 Form of contracts.
- 79 Bills of exchange and promissory notes.
- 80 Execution of deeds abroad.
- 81 Mortgages registered under this Ordinance.
- 82 Conveyances registered under this Ordinance.
- 83 Power for company to have official seal for use abroad.

Prospectus.

- 84 Filing of prospectus.
- 85 Specific requirements as to particulars of prospectus.
- 86 Obligations of companies where no prospectus is used.
- 87 Restriction on alteration of terms mentioned in prospectus or statement in lieu of prospectus.
- 88 Liability for statements in prospectus.

Allotment.

- 89 Restriction as to allotment.
- 90 Effect of irregular allotment.
- 91 Restrictions on commencement of business.
- 92 Return as to allotments.

Commissions and Discounts.

- 93 Power to pay certain commissions, and prohibition of payment of all other commissions, discounts, &c
- 94 Statement in balance sheet as to commissions and discounts.

Payment of Interest out of Capital.

- 95 Power of company to pay interest out of capital in certain cases.

Certificates of Shares, &c.

- 96 Limitation of time for issue of certificates.

Information as to Mortgages, Charges, &c.

- 97 Registration of mortgages and charges in the Colony.
- 98 Registration of enforcement of security.
- 99 Filing of accounts of receivers and managers.
- 100 Rectification of register of mortgages.
- 101 Entry of satisfaction.
- 102 Index to register of mortgages and charges.
- 103 Penalties.
- 104 Company's register of mortgages.
- 105 Right to inspect copies of instruments creating mortgages and charges and company's register of mortgages.
- 106 Right of debenture holders to inspect the register of debenture holders and to have copies of trust deed.

Debentures and Floating Charges.

- 107 Perpetual debentures.
- 108 Power to re-issue redeemed debentures in certain cases.
- 109 Specific performance of contract to subscribe for debentures.
- 110 Payments of certain debts out of assets subject to floating charge in priority to claims under the charge.

Statement to be published by Banking and certain other Companies.

- 111 Certain companies to publish statement in schedule.

Inspection and Audit.

- 112 Investigation of affairs of company by inspectors.
- 113 Power of company to appoint inspectors.
- 114 Report of inspectors to be evidence.
- 115 Appointment and remuneration of auditors.
- 116 Powers and duties of auditors.
- 117 Rights of preference shareholders, &c., as to receipt and inspection of reports, &c.

Carrying on Business with less than the legal Minimum of Members.

- 118 Prohibition of carrying on business with fewer than seven or, in the case of a private company, two members.

Service and Authentication of Documents.

- 119 Service of documents on company.
- 120 Authentications of documents.

Tables and Forms.

Sections.

121 Application and alteration of tables and forms.

Arbitrations.

122 Arbitration between companies and others.

Power to Compromise.

123 Power to compromise with creditors and members.

Meaning of "Private Company."

124 Meaning of "private company."

PART IV.

WINDING UP.

Preliminary.

125 Modes of winding up.

Contributories.

126 Liability as contributories of present and past members.

127 Definition of contributory.

128 Nature of liability of contributory.

129 Contributories in case of death of member.

130 Contributories in case of bankruptcy of member.

131 Provision as to married women.

Winding up by Court.

132 Circumstances in which company may be wound up by court.

133 Company when deemed unable to pay its debts.

134 Jurisdiction to wind up companies.

135 Transfer of proceedings.

136 Provisions as to applications for winding up.

137 Effect of winding-up order.

138 Commencement of winding up by court.

139 Power to stay or restrain proceedings against company.

140 Powers of court on hearing petition.

141 Actions stayed on winding-up order.

142 Copy of order to be forwarded to Registrar.

143 Power of court to stay winding up.

144 Court may have regard to wishes of creditors or contributories.

Official Receiver.

145 Definition of official receiver.

146 Statement of company's affairs to be submitted to official receiver.

147 Report by official receiver.

Liquidators.

148 Appointment, remuneration, and title of liquidators.

149 Custody of company's property.

150 Powers of liquidator.

151 Meetings of creditors and contributories in winding up.

152 Liquidator to give information to official receiver.

153 Payments of liquidator in winding up into bank.

154 Audit of liquidator's accounts in winding up.

155 Books to be kept by liquidator in winding up.

156 Release of liquidators.

157 Exercises and control of liquidator's powers.

158 Control of official receiver over liquidators.

Committee of Inspection, Special Manager, Receiver.

159 Committee of inspection in winding up.

160 Power to appoint special manager.

161 Power to appoint official receiver as receiver for debenture holders or creditors.

Ordinary Powers of Court.

162 Settlement of list of contributories and application of assets.

163 Power to require delivery of property.

164 Power to order payment of debts by contributory.

165 Power of court to make calls.

166 Power to order payment into bank.

167 Order on contributory conclusive evidence.

168 Power to exclude creditors not proving in time.

169 Adjustment of rights of contributories.

170 Power to order costs.

171 Dissolution of company.

172 Delegation to liquidator of certain powers of court.

Extraordinary Powers of Court.

Sections.

- 173 Power to summon persons suspected of having property of company.
- 174 Power to order public examination of promoters, directors, &c.
- 175 Power to arrest absconding contributory.
- 176 Powers of court cumulative.

Enforcement of and Appeal from Orders.

- 177 Power to enforce orders.
- 178 Appeals from order.

Voluntary Winding up.

- 179 Circumstances in which company may be wound up voluntarily.
- 180 Commencement of voluntary winding up.
- 181 Effect of voluntary winding up on status of company.
- 182 Notice of resolution to wind up voluntarily.
- 183 Consequences of voluntary winding up.
- 184 Notice by liquidator of his appointment.
- 185 Rights of creditors in a voluntary winding up.
- 186 Power to fill vacancy in office of liquidator.
- 187 Delegation of authority to appoint liquidators.
- 188 Arrangement when binding on creditors.
- 189 Power of liquidator to accept shares, &c., as consideration for sale of property of company.
- 190 Power to apply to court.
- 191 Power of liquidator to call general meeting.
- 192 Final meeting and dissolution.
- 193 Costs of voluntary liquidation.
- 194 Saving for rights of creditors and contributories.
- 195 Power of court to adopt proceedings of voluntary winding up.

Winding up subject to supervision of Court.

- 196 Power to order winding up subject to supervision.
- 197 Effect of petition for winding up subject to supervision.
- 198 Court may have regard to wishes of creditors and contributories.
- 199 Power for court to appoint or remove liquidators.
- 200 Effect of supervision order.

Supplemental Provisions.

- 201 Avoidance of transfers, &c., after commencement of winding up.
- 202 Debts of all descriptions to be proved.
- 203 Application of bankruptcy rules in winding up of insolvent companies.
- 204 Preferential payments.
- 205 Fraudulent preference.
- 206 Avoidance of certain attachments, executions, &c., in case of company.
- 207 Effect of floating charge.
- 208 General scheme of liquidation may be sanctioned.
- 209 Power of court to assess damages against delinquent directors, &c.
- 210 Penalty for falsification of books.
- 211 Prosecution of delinquent directors, &c.
- 212 Penalty of perjury.
- 213 Meetings to ascertain wishes of creditors or contributories.
- 214 Books of company to be evidence.
- 215 Inspection of books.
- 216 Disposal of books and papers of company.
- 217 Power of court to declare dissolution of company void.
- 218 Information as to pending liquidations.
- 219 Judicial notice of signature of officers.
- 220 Affidavits.
- 221 Companies liquidation account defined.
- 222 Separate accounts of particular estates.
- 223 Officers and remunerations.

Rules and Fees.

- 224 Rules and fees for winding up.
- 225 Powers to make rules of procedure.

Removal of Defunct Companies from Register.

- 226 Registrar may strike defunct company off register.

PART V.

REGISTRATION OFFICE AND FEES.

- 227 Registration office.
- 228 Fees.

PART VI.

APPLICATION OF ORDINANCE TO COMPANIES FORMED AND REGISTERED UNDER FORMER COMPANIES ORDINANCES.

Sections.

229 Application of Ordinance to companies formed under former Companies Ordinances.

PART VII.

WINDING UP OF UNREGISTERED COMPANIES.

230 Meaning of unregistered company.
231 Winding up of unregistered companies.
232 Contributories in winding up of unregistered company.
233 Power of court to stay or restrain proceedings.
234 Actions stayed on winding up order.
235 Directions as to property in certain cases.
236 Provisions of part of Ordinance cumulative.

PART VIII.

COMPANY ESTABLISHED OUTSIDE THE COLONY.

237 Requirements as to companies established outside the Colony.
238 Registration fees.
239 Power of companies incorporated outside Colony to hold land on complying with section 237.

PART IX.

SUPPLEMENTAL.

Legal Proceedings, Offences, &c.

240 Prosecution of offences.
241 Applications of fines.
242 Costs in actions by certain limited companies.
243 Power of court to grant relief in certain cases.
244 Penalty for false statement.
245 Penalty for improper use of word "limited."

Repeal of Ordinances and Transitional Provisions.

246 Repeal of Ordinances and savings.
247 Saving of pending proceedings for winding up.
248 Saving of deeds.
249 Former registers continued.
250 Saving for existing rules of procedure, &c.
251 Substitution of provisions of this Ordinance for provisions of repealed Ordinance.

THE SCHEDULES.

First Schedule.

Table A.—Regulations for Management of a Company Limited by Shares.
Table B.—Table of fees to be paid to the Registrar of Companies.
Form C.—Form of Statement to be published by Banking and Insurance Companies, and Deposit, Provident, or Benefit Societies.

Second Schedule.

Statement in lieu of Prospectus filed by _____, Limited, pursuant to Section 86, of "The Companies Ordinance No. — of 1923."

Third Schedule.

Form A.—Memorandum of Association of a Company Limited by Shares.
Form B.—Memorandum and Articles of Association of a Company Limited by Guarantee and not having a Share Capital.
Form C.—Memorandum and Articles of Association of a Company Limited by Guarantee and having a Share Capital.
Form D.—Memorandum and Articles of Association of an Unlimited Company having a Share Capital.
Form E.—As required in Part II. of the Ordinance.
Summary of Share Capital, &c.
Form F.—License to hold lands.

Fourth Schedule.

Form of Mortgage.

Fifth Schedule.

Provisions referred to in section 244 of the Ordinance.

Sixth Schedule.

Enactments repealed.

**An Ordinance to provide for the Incorporation, Regulation,
and Winding up of Trading Companies and other
Associations.**

WHEREAS it is expedient to make better provision for the incorporation, regulation, and winding up of trading companies and other associations: Be it therefore enacted by the Governor of Ceylon, by and with the advice and consent of the Legislative Council thereof, as follows:

Preamble.

1 This Ordinance may be cited as "The Companies Ordinance, No. of 1924," and shall come into operation on such day as the Governor shall, by Proclamation in the Government Gazette," appoint.

Short title and commencement.

Interpretation, &c.

2 In this Ordinance, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them (that is to say):

Interpretation.

- "Existing company" means a company formed and registered under any previous Ordinance providing for the incorporation, regulation, and winding up of trading companies and other associations;
- "Company" means a company formed and registered under this Ordinance or an existing company;
- "Articles" means the articles of association of a company as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained (as the case may be) in part C of the schedule annexed to "The Joint Stock Companies Ordinance, 1861," or in table B in the schedule annexed to "The Joint Stock Banking Ordinance, 1897," or in table A in the first schedule to this Ordinance;
- "Memorandum" means the memorandum of association of a company as originally framed or as altered in pursuance of the provisions of this Ordinance;
- "Document" includes summons, notice, order, and other legal process, and registers;
- "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;
- "Debenture" includes debenture stock;
- "Books and papers" and "books or papers" include accounts, deeds, writings, and documents;
- "The Registrar of Companies," or, when used in relation to registration of companies, "the Registrar," means the Registrar or other officer performing under this Ordinance the duty of registration of companies;
- "The court" used in relation to a company means the court having jurisdiction to wind up the company;
- "Alien" includes any body corporate not incorporated in some part of His Majesty's dominions and any class of aliens;
- "Joint Stock Companies Ordinances" means "The Joint Stock Companies Ordinances, 1861, 1888, and 1893," "The Joint Stock Banking Companies Ordinance, 1897," or any one or more of those Ordinances, as the case may require;
- "General rules" means general rules made under this Ordinance, and includes forms;
- "Prescribed" means, as respects the provisions of this Ordinance relating to the winding up of companies, prescribed by general rules, and as respects the other provisions of this Ordinance, prescribed by the Governor in Executive Council;
- "Director" includes any person occupying the position of director by whatever name called;
- "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.
- "Personal representative" means executor or administrator.

PART I.

CONSTITUTION AND INCORPORATION.

Prohibition of Large Partnerships.

Prohibition of partnerships exceeding certain number.

3 (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 Ordinance, or is formed in pursuance of some other Ordinance, 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 Ordinance, or is formed in pursuance of some other Ordinance, or of letters patent.

Memorandum of Association.

Mode of forming incorporated company.

4 Any seven or more persons (or, where the company to be formed will be a private company within the meaning of this Ordinance, 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 Ordinance in respect of registration, form an incorporated company, with or without limited liability (that is to say), either—

- (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 (in this Ordinance termed 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 Ordinance termed a company limited by guarantee); or
- (iii.) A company not having any limit on the liability of its members (in this Ordinance termed an unlimited company).

Memorandum of company limited by shares.

5 In the case of a company limited by shares—

- (1) The memorandum must state—
 - (i.) The name of the company, with "limited" as the last word in its name;
 - (ii.) That the registered office of the company is to be situate in Ceylon.
 - (iii.) The objects of the company;
 - (iv.) That the liability of the members is limited;
 - (v.) The amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount.
- (2) No subscriber of the memorandum may take less than one share.
- (3) Each subscriber must write opposite to his name the number of shares he takes.

Memorandum of company limited by guarantee.

6 In the case of a company limited by guarantee—

- (1) The memorandum must state—
 - (i.) The name of the company, with "limited" as the last word in its name;
 - (ii.) That the registered office of the company is to be situate in Ceylon;
 - (iii.) The objects of the company;
 - (iv.) That the liability of the members is limited;
 - (v.) 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 for 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.

(2) If the company has a share capital—

- (i.) 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 ;
- (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.

7 In the case of an unlimited company—

(1) The memorandum must state—

- (i.) The name of the company ;
- (ii.) That the registered office of the company is to be situate in Ceylon ;
- (iii.) The objects of the company.

(2) If the company has a share capital—

- (i.) No subscriber of the memorandum may take less than one share ;
- (ii.) Each subscriber must write opposite to his name the number of shares he takes.

8 The memorandum must bear a stamp of fifty rupees, and must be signed by each subscriber in the presence of at least one witness, who must attest the signature.

9 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 Ordinance.

10 (1) A company may not be registered by a name—

- (a) Identical with that by which a company in existence is already registered ; or
- (b) 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 ; or
- (c) Which, having regard to the nationality of the persons by whom the shares in such company are wholly or mainly owned or controlled is, in the opinion of the Registrar, misleading.

(2) If a company, through inadvertence or otherwise, is, without such consent as aforesaid, 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 may, with the sanction of the Registrar, change its name.

(3) The name of any company the shares in which are owned or controlled wholly or mainly by persons who are not British shall be deemed to be misleading, unless it contains some indication which, in the opinion of the Registrar, is sufficient to intimate that the persons by whom the shares in the said company are wholly or mainly owned or controlled are not British.

(4) Any company may, by special resolution and with the approval of the Governor in Executive Council signified in writing, change its name.

(5) 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.

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

11 (1) Subject to the provisions of this section, a company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company, so far as may be necessary to enable it—

- (a) To carry on its business more economically or more efficiently ; or
- (b) To attain its main purpose by new or improved means ; or

Memorandum of unlimited company.

Stamp and signature of memorandum.

Restriction on alteration of memorandum.

Name of company and change of name.

Alteration of objects of company.

- (c) To enlarge or change the local area of its operations ; or
- (d) To carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company ; or
- (e) To restrict or abandon any of the objects specified in the memorandum.

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

(3) Before confirming the alteration the court must be satisfied—

- (a) 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
- (b) 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.

(4) 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.

(5) 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.

(6) An office copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall, within fifteen days from the date of the order, be delivered by the company to the Registrar of Companies, and he shall register the same, and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Ordinance with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum so altered shall be the memorandum of the company. The court may by order at any time extend the time for the delivery of documents to the Registrar under this section for such period as the court may think proper.

(7) If a company makes default in delivering to the Registrar of Companies any document required by this section to be delivered to him, the company shall be guilty of an offence, and on conviction be liable to a fine not exceeding one hundred rupees for every day during which it is in default.

Articles of Association.

Registration of articles.

12 (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) Articles of association may adopt all or any of the regulations contained in table A in the first schedule to this Ordinance.

(3) 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.

(4) 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.

13 In the case of a company limited by shares and registered after the commencement of this Ordinance, 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 Ordinance, 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.

Application of table A.

14 Articles must—

- (a) Be printed ;
- (b) Be divided into paragraphs numbered consecutively ;
- (c) Bear a stamp of ten rupees ;
- (d) Be signed by each subscriber of the memorandum of association in the presence of at least one witness, who must attest the signature.

Form, stamp, and signature of articles.

15 Subject to the provisions of this Ordinance and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles ; and any alterations or additions so made shall be as valid as if originally contained in the articles, and be subject in like manner to alteration by special resolution.

Alteration of articles by special resolution.

16 (1) Where any provision in the articles of association of a registered company is designed to restrict or limit, or has the effect of restricting or limiting, the proportion or amount of the capital of the company or of the voting power in the company, or of the control upon the board of the company which may be held or exercised by or on behalf of aliens, or is otherwise designed to restrict or limit, or has the effect of restricting or limiting, the interests or authority of aliens in the company or the control of the company by aliens, an alteration of that provision shall not be of any effect, notwithstanding anything in any other Ordinance, until it has received the written consent of the Governor in Executive Council.

Prohibition of alteration of articles restricting foreign interests in companies except with consent of Governor in Executive Council.

(2) The decision of the Governor in Executive Council as to whether an alteration of a provision requires the consent of the Governor in Executive Council under this Ordinance or not shall be final and conclusive.

(3) This section shall apply to any regulations or provisions in the nature of regulations affecting an incorporated company, not being a registered company, which can be altered by the company, in the same manner as it applies to the articles of association of a registered company.

General Provisions.

17 (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 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 Ordinance.

Effect of memorandum and articles.

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

18 The memorandum and the articles (if any) shall be delivered to the Registrar of Companies, and he shall retain and register them.

Registration of memorandum and articles.

19 (1) On the registration of the memorandum of a company, the Registrar shall certify under his hand that the company is incorporated, and in the case of a limited company, that the company is limited.

Effect of registration.

(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 the 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 Ordinance.

Conclusiveness of certificate of incorporation.

20 A certificate of incorporation given by the Registrar in respect of any association shall be conclusive evidence that all the requirements of this Ordinance in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorized to be registered and duly registered under this Ordinance.

Affidavit by proctor as to compliance with requirements as to registration, &c.

21 An affidavit by a proctor engaged in the formation of the company, or by a person named in the articles as a director or secretary of the company, of compliance with all or any of the said requirements shall be produced to the Registrar, and the Registrar may accept such an affidavit as sufficient evidence of compliance.

Copies of memorandum and articles to be given to members.

22 (1) Every company shall send to every member, at his request, and on payment of three rupees such less sum as the company may prescribe, a copy of the memorandum and of the articles (if any).

(2) If a company makes default in complying with the requirements of this section, it shall be guilty of an offence, and on conviction be liable for each offence to a fine not exceeding ten rupees.

Power to dispense with "limited" in name of charitable and other companies.

Associations not for Profit.

23 (1) Where it is proved to the satisfaction of the Governor in Executive Council that an association about to be formed as a limited company is to be formed 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 Governor in Executive Council may by license 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 license by the Governor in Executive Council under this section may be granted on such conditions and subject to such regulations as the Governor in Executive Council thinks fit, and those conditions and regulations shall be binding on the association, and shall, if the Governor in Executive Council so direct, be inserted in the memorandum and articles, or in one of those documents.

(3) 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 sending lists of members and directors and managers to the Registrar of Companies.

(4) A license under this section may at any time be revoked by the Governor in Executive Council, 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 license is so revoked the Governor in Executive Council shall give to the association notice in writing of their intention, and shall afford the association an opportunity of being heard in opposition to the revocation.

Companies limited by Guarantee.

Provision as to companies limited by guarantee.

24 (1) In the case of a company limited by guarantee and not having a share capital, and registered after the commencement of this Ordinance, 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 Ordinance relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of any company limited by guarantee and registered after the commencement of this Ordinance, 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.

PART II.

DISTRIBUTION AND REDUCTION OF SHARE
CAPITAL, REGISTRATION OF UNLIMITED
COMPANY AS LIMITED, AND UNLIMITED
LIABILITY OF DIRECTORS.

Distribution of Share Capital.

25 (1) The shares or other interests of any member in a company shall be movable property, transferable in manner provided by the articles of the company, and shall not be of the nature of immovable property.

Nature of shares.

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

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

Certificate of shares or stock.

27 (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.

Definition of member.

(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.

28 (1) Every company shall keep in one or more books a register of its members, and enter therein the following particulars :

Register of members.

(i.) The names and addresses, and the occupations, if any, of the members, and, in the case of a company having a share capital, a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member ;

(ii.) The date at which each person was entered in the register as a member ;

(iii.) The date at which any person ceased to be a member.

(2) If a company fails to comply with this section, it shall be guilty of an offence, and on conviction be liable to a fine not exceeding fifty rupees for every day during which the default continues ; and every director and manager of the company who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty.

29 (1) Every company having a share capital shall once at least in every year make a list of all persons who, on the fourteenth day after the first or only ordinary general meeting in the year, are members of the company.

Annual list of members and summary.

(2) The list must state the names, addresses, and occupations of all present members therein mentioned, and the number of shares held by each of the existing members at the date of the return, and must contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, and specifying the following particulars :

(a) The amount of the share capital of the company, and the number of the shares into which it is divided ;

(b) The number of shares taken from the commencement of the company up to the date of the return ;

(c) The amount called up on each share ;

(d) The total amount of calls received ;

(e) The total amount of calls unpaid ;

(f) The 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 ;

(g) The total number of shares forfeited ;

(h) The names, addresses, occupations, and nationalities of the persons who at the date of the return are the directors of the company, or occupy the position of directors, by whatever name called, and of any persons in accordance

with whose directions or instructions the directors of the company are accustomed to act, any former names that may have been borne by any such persons, and if the nationalities of any such persons are not their nationalities of origin, their nationalities of origin ; and

(2) The total amount of debt due from the company in respect of all mortgages and charges which are required to be registered with the Registrar of Companies under this Ordinance.

(3) The summary must also (except where the company is a private company) include a statement, made up to such date as may be specified in the statement, in the form of a balance sheet, audited by the company's auditors, and containing a summary of its share capital, its liabilities, and its assets, giving such particulars as will disclose the general nature of those liabilities and assets, and how the values of the fixed assets have been arrived at, but the balance sheet need not include a statement of profit and loss.

(4) The above list and summary must be contained in a separate part of the register of members, and must be completed within seven days after the fourteenth day aforesaid, and the company must forthwith file with the Registrar of Companies a copy signed by a Director or by the manager or by the secretary of the company.

(5) If a company makes default in complying with the requirements of this section, it shall be guilty of an offence, and on conviction be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every director and manager of the company who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty.

Trusts not to be entered on register.

30 No notice of any trust, expressed, implied, or constructive, shall be entered on the register, or be receivable by the Registrar.

Registration of transfer at request of transferor.

31 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.

Transfer by personal representative.

32 A transfer of the share or other interest of a deceased member of a company made by his personal representative shall, although the personal 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.

Inspection of register of members.

33 (1) The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company, and, except when closed under the provisions of this Ordinance, shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member gratis, and to the inspection of any other person on payment of one rupee, or such less sum as the company may prescribe, for each inspection.

(2) Any member or other person may require a copy of the register, or of any part thereof, or of the list and summary required by this Ordinance, or any part thereof, on payment of fifty cents, or such less sum as the Company may prescribe, for every hundred words or fractional part thereof required to be copied.

(3) If any inspection or copy required under this section is refused, the company shall be guilty of an offence, and on conviction be liable for each refusal to a fine not exceeding twenty rupees, and to a further fine not exceeding twenty rupees for every day during which the refusal continues, and every director and manager of the company who knowingly authorizes or permits the refusal shall be liable to the like penalty ; and the court may by order compel an immediate inspection of the register.

34 A company may, on giving notice by advertisement in the "Government Gazette," close the register of members for any time or times not exceeding in the whole thirty days in each year.

Power to close register.

35 (1) If—

(a) The name of any person is, without sufficient cause, entered in or omitted from the register of members of a company ; or

Power of court to rectify register.

(b) Default is made or unnecessary delay takes place 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 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 application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand ; and 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 Ordinance to send a list of its members to the Registrar of Companies, the court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the Registrar.

36 The register of members shall be *prima facie* evidence of any matters by this Ordinance directed or authorized to be inserted therein.

Register to be evidence.

37 (1) A company having a share capital, whose objects comprise the transaction of business in the United Kingdom or in any British Colony, may, if so authorized by its articles, cause to be kept in the United Kingdom or in any such Colony in which it transacts business a branch register of members resident in the United Kingdom or that Colony (in this Ordinance called a local register).

Power for company to keep register out of Colony.

(2) The company shall within one month from the date of the opening of any local register give to the Registrar of Companies notice of the situation of the office where any local register is kept, and of any change in its situation, and of the discontinuance of the office in the event of its being discontinued. If any company makes default in complying with the provisions of this sub-section it shall be guilty of an offence and on conviction be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every director and manager of the company who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty.

(3) For the purpose of the provisions of this Ordinance relating to local registers the term "Colony" includes such territories as may from time to time be vested in His Majesty by virtue of any Act of Parliament for the Government of India, and any plantation, territory, or settlement situate elsewhere within His Majesty's dominions.

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

Regulations as to local register.

(2) It shall be kept in the same manner in which the principal register is by this Ordinance required to be kept, except that the advertisement before closing the register shall be inserted in some newspaper circulating in the district wherein the register to be closed is kept, and that any rectification of the register made by any competent court in the United Kingdom or such Colony shall be deemed as good and effectual as if it had been made by the court.

(3) The company shall transmit to its registered office a copy of every entry in its local 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 local register, and the duplicate shall, for all the purposes of this Ordinance, 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 local register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a local register shall, during the continuance of that registration, be registered in any other register.

(5) The company may discontinue to keep any local register, and thereupon all entries in that register shall be transferred to some other local register kept by the company in the United Kingdom or in such Colony, or to the principal register.

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

Issue and effect of share warrants to bearer.

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

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

(3) 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; and 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 or stock therein specified without the warrant being surrendered and cancelled.

(4) 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 Ordinance, either to the full extent or for any purposes defined in the articles, except that he shall not be qualified in respect of the shares or stock specified in the warrant for being a director or manager of the company, in cases where such a qualification is required by the articles.

(5) 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 or stock 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 or stock included in the warrant, distinguishing each share by its number ; and
- (iii.) The date of the issue of the warrant.

(6) Until the warrant is surrendered, the above particulars shall be deemed to be the particulars required by this Ordinance to be entered in the register of members ; and on the surrender, the date of the surrender must be entered as if it were the date at which a person ceased to be a member.

Forgery, personation, unlawfully engraving plates, &c.

40 (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 warrant or coupon, or any document purporting to be a share warrant or coupon, issued in pursuance of this Ordinance ; or by means of any such forged or altered share warrant, coupon, or document, purporting as aforesaid, demands or endeavours to obtain or receive any share or interest in any company under this Ordinance, or to receive any dividend or money payable in respect thereof, knowing the warrant, coupon, or document to be forged or altered ; or

(ii.) Falsely and deceitfully personates any owner of any share or interest in any company, or of any share warrant or coupon, issued in pursuance of this Ordinance, and thereby obtains or endeavours to obtain any such share or interest or share warrant or coupon, or receives or endeavours to receive any money due to any such owner, as if the offender were the true and lawful owner;

he shall be guilty of an offence, and being convicted thereof shall be liable to rigorous imprisonment for a term not exceeding twenty years.

(2) If any person without lawful authority or excuse, proof whereof shall lie on him, engraves or makes on any plate, wood, stone, or other material any share warrant or coupon purporting to be a share warrant or coupon issued or made by any particular company in pursuance of this Ordinance, or to be a blank share warrant or coupon so issued or made, or to be a part of such a share warrant or coupon, or uses any such plate, wood, stone, or other material for the making or printing of any such share warrant or coupon, or of any such blank share warrant or coupon, or any part thereof respectively, or knowingly has in his custody or possession any such plate, wood, stone, or other material, he shall be guilty of an offence, and being convicted thereof shall be liable to rigorous imprisonment for a term not exceeding ten years.

41 A company, if so authorized by its articles, may do any one or more of the following things, namely :

- (1) 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 :
- (2) 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 :
- (3) 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.

Power of company to arrange for different amounts being paid on shares.

42 (1) When a company has accumulated a sum of undivided profits, which with the sanction of the shareholders may be distributed among the shareholders in the form of a dividend or bonus, it may, by special resolution, return the same, or any part thereof, to the shareholders in reduction of the paid-up capital of the company, the unpaid capital being thereby increased by a similar amount.

Power to return accumulated profits in reduction of paid-up share capital.

(2) The resolution shall not take effect until a memorandum, showing the particulars required by this Ordinance in the case of a reduction of share capital, has been produced to and registered by the Registrar, but the other provisions of this Ordinance with respect to reduction of share capital shall not apply to a reduction of paid-up share capital under this section.

(3) On a reduction of paid-up capital in pursuance of this section any shareholder, or any one or more of several joint shareholders, may within one month after the passing of the resolution for the reduction, require the company to retain, and the company shall retain accordingly, the whole of the money actually paid on the shares held by him either alone or jointly with any other person, which, in consequence of the reduction, would otherwise be returned to him or them, and thereupon those shares shall, as regards the payment of dividend, be deemed to be paid up to the same extent only as the shares on which payment has been accepted by the shareholders in reduction of paid-up capital, and the company shall invest and keep invested the money so retained in such securities authorized for investment by trustees as the company may determine, and on the money so invested or on so much thereof as from time to time exceeds the amount of calls subsequently made on the shares in respect of which it has been retained, the company shall pay the interest received from time to time on the securities.

(4) The amount retained and invested shall be held to represent the future calls which may be made to replace the share capital so reduced on those shares, whether the amount obtained on sale of the whole or such proportion thereof as represents the amount of any call when made produces more or less than the amount of the call.

(5) On a reduction of paid-up share capital in pursuance of this section, the powers vested in the directors of making calls on shareholders in respect of the amount unpaid on their shares shall extend to the amount of the unpaid share capital as augmented by the reduction.

(6) After any reduction of share capital under this section the company shall specify in the annual list of members required by this Ordinance the amounts retained at the request of any of the shareholders in pursuance of this section, and shall specify in the statements of account laid before any general meeting of the company the amount of undivided profits returned in reduction of paid-up share capital under this section.

Power of company limited by shares to alter its share capital.

43 (1) A company limited by shares, if so authorized by its articles, may alter the conditions of its memorandum as follows (that is to say), it may—

- (a) Increase its share capital by the issue of new shares of such amount as it thinks expedient ;
- (b) Consolidate and divide all or any of its share capital into shares of larger amount than its existing shares ;
- (c) Convert all or any of its paid-up shares into stock, and re-convert that stock into paid-up shares of any denomination ;
- (d) Subdivide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived ;
- (e) Cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The powers conferred by this section with respect to subdivision of shares must be exercised by special resolution.

(3) Where any alteration has been made under this section 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. If a company makes default in complying with this provision, it shall be guilty of an offence, and on conviction be liable to a fine not exceeding ten rupees for each copy in respect of which default is made ; and every director and manager of the company who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty.

(4) 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 Ordinance.

Notice to Registrar of consolidation of share capital, conversion of shares into stock, &c.

44 Where a company having a share capital has consolidated and divided its share capital into shares of larger amount than its existing shares, or converted any of its shares into stock, or re-converted stock into shares, it shall file with the Registrar of Companies a written notice of the consolidation, division, conversion, or re-conversion, specifying the shares consolidated, divided, or converted, or the stock re-converted.

Effect of conversion of shares into stock.

45 Where a company having a share capital has converted any of its shares into stock and filed notice of the conversion with the Registrar of Companies, all the provisions of this Ordinance which are applicable to shares only shall cease as to so much of the share capital as is converted into stock ; and the register of members of the company, and the list of members to be forwarded to the Registrar, shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares hereinbefore required by this Ordinance.

Notice of increase of share capital or of members.

46 (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 not having a share capital has increased the number of its members beyond the registered number, it shall file with the Registrar of Companies, in the case of an increase of share capital, within fifteen days after the passing, or in the case of a special resolution, the confirmation of the resolution

authorizing the increase, and in the case of an increase of members, within fifteen days after the increase was resolved on or took place written notice of the increase of capital or members, and the Registrar shall record the increase.

(2) If a company makes default in complying with the requirements of this section, it shall be guilty of an offence, and on conviction be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every director and manager of the company who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty.

47 (1) A company limited by shares may, by special resolution confirmed by an order of the court, modify the conditions contained in its memorandum so as to re-organize its share capital, whether by the consolidation of shares of different classes or by the division of its shares into shares of different classes :

Re-organization of share capital.

Provided that no preference or special privilege attached to or belonging to any class of shares shall be interfered with except by a resolution passed by a majority in number of shareholders of that class holding three-fourths of the share capital of that class and confirmed at a meeting of shareholders of that class in the same manner as a special resolution of the company is required to be confirmed, and every resolution so passed shall bind all shareholders of the class.

(2) Where an order is made under this section, a certified copy thereof shall be filed with the Registrar of Companies within seven days after the making of the order, or within such further time as the court may allow, and the resolution shall not take effect until such a copy has been so filed.

Reduction of Share Capital.

48 (1) Subject to confirmation by the court, a company limited by shares, if so authorized 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—

Special resolution for reduction of share capital.

- (a) Extinguish or reduce the liability on any of its shares in respect of share capital not paid up ; or
- (b) 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
- (c) 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 Ordinance called a resolution for reducing share capital.

49 Where a company has passed and confirmed a resolution for reducing share capital, it may apply by petition to the court for an order confirming the reduction.

Application to court for confirming order.

50 On and from the confirmation by a company of a resolution for reducing share capital, or where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, then on and from the presentation of the petition for confirming the reduction, the company shall add to its name, until such date as the court may fix, the words "and reduced" as the last words in its name, and those words shall until that date be deemed to be part of the name of the company :

Addition to name of company of "and reduced."

Provided that where the reduction does not involve 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 it thinks expedient, dispense altogether with the addition of the words "and reduced."

Objections by creditors, and settlement of list of objecting creditors.

51 (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; 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.

(2) 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.

(3) 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) :

- (i.) 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 ;
- (ii.) 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.

Order confirming reduction.

52 The court, if satisfied, with respect to every creditor of the company who under this Ordinance is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

Registration of order and minute of reduction.

53 (1) The Registrar of Companies on production to him of an order of the court confirming the reduction of the share capital of a company, and the delivery to 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 share, shall register the order and minute.

(2) On the registration, 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 Ordinance with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

Minute to form part of memorandum.

54 (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 ; and must be embodied in every copy of the memorandum issued after its registration.

(2) If a company makes default in complying with the requirements of this section, it shall be guilty of an offence, and on conviction be liable to a fine not exceeding ten rupees for each copy in respect of which default is made, and every director and manager of the company who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty.

55. (1) 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 paid, or (as the case may be) the reduced amount, if any, which is to be deemed to have been paid, on the share and the amount of the share as fixed by the minute :

Liability of members in respect of reduced shares.

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 Ordinance with respect to winding up by the court, to pay the amount of his debt or claim, then—

(i.) 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 that registration ; and

(ii.) If the company is wound up, 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.

56 If any director, manager, or officer of the company wilfully conceals the name of any creditor entitled to object to the reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor, or if any director or manager of the company aids or abets in or is privy to any such concealment or misrepresentation as aforesaid, every such director, manager, or officer shall be guilty of an offence, and shall on conviction be liable to imprisonment of either description for a term not exceeding two years or to a fine not exceeding Rs. 1,000 or to both.

Penalty on concealment of name of creditor.

57 In any case of reduction of share capital, the court may require 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 give proper information to the public, and if the court thinks fit, the causes which led to the reduction.

Publication of reasons for reduction.

58 A company limited by guarantee and registered after the commencement of this Ordinance may, if it has a share capital, and is so authorized by its articles, increase or reduce its share capital in the same manner and subject to the same conditions in and subject to which a company limited by shares may increase or reduce its share capital under the provisions of this Ordinance.

Increase and reduction of share capital in case of a company limited by guarantee having a share capital.

Registration of Unlimited Company as Limited.

59 (1) Subject to the provisions of this section, any company registered as unlimited may register under this Ordinance as limited, or any company already registered as a limited company may re-register under this Ordinance, 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 this Ordinance in the same manner in all respects as if no such change of registration had taken place.

Registration of unlimited company as limited.

(2) On registration in pursuance of this section the Registrar shall close the former registration of the company, and may dispense with the delivery to 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 Ordinance.

Power of unlimited company to provide for reserve share capital on registration.

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

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

Reserve liability of limited company.

Reserve Liability of Limited Company.

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

Limited company may have directors with unlimited liability.

Unlimited Liability of Directors.

62 (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 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, managers, and secretary (if any) 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, manager, or secretary makes default in giving such a notice, he shall be guilty of an offence, and on conviction be liable to a fine not exceeding one thousand rupees, 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.

Special resolution of limited company making liability of directors unlimited.

63 (1) A limited company, if so authorized 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 confirmation of any such special resolution the provisions thereof shall be as valid as if they had been originally contained in the memorandum ; and a copy thereof shall be embodied in or annexed to every copy of the memorandum issued after the confirmation of the resolution.

(3) If a company makes default in complying with the requirements of this section, it shall be guilty of an offence, and on conviction be liable to a fine not exceeding ten rupees for each copy in respect of which default is made ; and every director or manager of the company who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty.

PART III.

MANAGEMENT AND ADMINISTRATION.

Office and Name.

Registered office of company.

64 (1) Every company shall have a registered office to which all communications and notices may be addressed.

(2) Notice of the situation of the registered office, and of any change therein, shall be given to the Registrar of Companies, who shall record the same.

(3) If a company carries on business without complying with the requirements of this section, it shall be guilty of an offence, and on conviction be liable to a fine not exceeding fifty rupees for every day during which it so carries on business.

65 (1) Every limited company—

Publication of name by a limited company.

- (a) Shall paint or affix, and keep painted or affixed, its name, in the English, Sinhalese, and Tamil languages, on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible ;
- (b) Shall have its name in the English language engraven in legible characters on its seal ;
- (c) Shall have its name in the English language mentioned in legible characters in all notices, advertisements, and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, 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.

(2) If a limited company does not paint or affix, and keep painted or affixed, its name in manner directed by this Ordinance, it shall be guilty of an offence, and on conviction be liable to a fine not exceeding fifty rupees for not so painting or affixing its name, and for every day during which its name is not so kept painted or affixed, and every director and manager of the company who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty.

(3) If any director, manager, or officer of a limited company, or any person on its behalf, uses or authorizes the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorizes the issue of any notice, advertisement, or other official publication of the company, or signs or authorizes to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque, order for money or goods, or issues or authorizes to be issued any bill of parcels, invoice, receipt, or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be guilty of an offence, and on conviction be liable to a fine not exceeding five hundred rupees, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods for the amount thereof, unless the same is duly paid by the company.

Meetings and Proceedings.

66 (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, and, if not so held, the company, and every director, manager, secretary, and other officer of the company, who is knowingly a party to the default, shall be guilty of an offence, and on conviction be liable to a fine not exceeding five hundred rupees.

Annual general meeting.

(2) When default has been made in holding a meeting of the company in accordance with the provisions of this section, the court may, on the application of any member of the company, call or direct the calling of a general meeting of the company.

67 (1) Every company limited by shares and registered on or after the commencement of this Ordinance 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, hold a general meeting of the members of the company, which shall be called the statutory meeting.

First statutory meeting of company.

(2) The directors shall, at least seven days before the day on which the meeting is held, forward a report (in this Ordinance called "the statutory report") to every member of the company and to every other person entitled under this Ordinance 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 and 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 on account of its capital, whether from shares or debentures, 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 of Companies 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 commencement 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) If a petition is presented to the court in manner provided by part IV. of this Ordinance for winding up the company on the ground of default in filing the statutory report or in holding the statutory meeting, the court may, instead of directing that the company be wound up, give directions for the statutory report to be filed or a meeting to be held, or make such other order as may be just.

(10) 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.

Convening
of extraordinary
general
meeting on
requisition.

68 (1) Notwithstanding anything in the articles of a company, the directors of a company shall, on the requisition of not less than one-seventh of the members holding not less than one-seventh of the issued share capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to convene an extraordinary general meeting of the company.

(2) The requisition must state the objects of the meeting and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.

(3) If the directors do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists, or a majority of them in value, may themselves convene the meeting, but any meeting so convened shall not be held after three months from the date of the deposit.

(4) If at any such meeting a resolution requiring confirmation at another meeting is passed, the directors shall forthwith convene a further extraordinary general meeting for the purpose of considering the resolution, and, if thought fit, of confirming it as a special resolution; and, if the directors do not convene the meeting within seven days from the date of the passing of the first resolution, the requisitionists, or a majority of them in value, may themselves convene the meeting.

(5) Any meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

69 In default of, and subject to, any regulations in the articles—

- (i.) A meeting of a company may be called by ten days' notice in writing served on every member in manner in which notices are required to be served by table A in the first schedule to this Ordinance;
- (ii.) Five members may call a meeting;
- (iii.) Any person elected by the members present at a meeting may be chairman thereof;
- (iv.) Every member shall have one vote.

70 A company which is a member of another company may, by resolution of the directors, authorize any of its officials or any other person to act as its representative at any meeting of that other company, and the person so authorized shall be entitled to exercise the same powers on behalf of the company which he represents as if he were an individual shareholder of that other company.

71 (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 entitled to vote as are present in person or by proxy (where proxies are allowed) 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—

- (a) Passed in manner required for the passing of an extraordinary resolution; and
- (b) Confirmed by a majority of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a subsequent general meeting, of which notice has been duly given, and held after an interval of not less than fourteen days, nor more than one month, from the date of the first meeting.

(3) At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed, 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 is submitted to be passed or a special resolution is submitted to be passed or confirmed a poll may be demanded, if demanded by three persons for the time being entitled according to the articles to vote, unless the articles of the company require a demand by such number of such persons, not in any case exceeding five, as may be specified in the articles.

Provisions as to meetings and votes.

Representation of companies at meetings of other companies of which they are members.

Definitions of extraordinary and special resolution.

(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 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 the articles.

Registration and copies of special and extraordinary resolution.

72 (1) A copy of every special and extraordinary resolution shall within fifteen days from the confirmation of the special resolution, or from the passing of the extraordinary resolution, as the case may be, be printed and forwarded to the Registrar of Companies, who shall record the same.

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

(3) Where articles have not been registered, a copy of every special resolution shall be forwarded in print to any member at his request, on payment of fifty cents, or such less sum as the company may direct.

(4) If a company makes default in printing or forwarding a copy of a special or extraordinary resolution to the Registrar, it shall be guilty of an offence, and on conviction be liable to a fine not exceeding twenty rupees for every day during which the default continues.

(5) If a company makes default in embodying in or annexing to a copy of its articles or in forwarding in print to a member when required by this section a copy of a special resolution, it shall be guilty of an offence, and on conviction be liable to a fine not exceeding ten rupees for each copy in respect of which default is made.

(6) Every director and manager of a company who knowingly and wilfully authorizes or permits any default by the company in complying with the requirements of this section shall be liable to the like penalty as is imposed by this section on the company for that default.

Minutes of proceedings of meetings and directors.

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

(2) Any such minute if purporting to be signed 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.

Appointment, Qualification, &c., of Directors.

Restrictions on appointment or advertisement of director.

74 (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 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 authorized in writing—

- (i.) Signed and filed with the Registrar of Companies a consent in writing to act as such director ; and
- (ii.) Either signed the memorandum for a number of shares not less than his qualification (if any), or signed and filed with the Registrar a contract in writing to take from the company and pay for his qualification shares (if any).

(2) On the application for registration of the memorandum and articles of a company the applicant shall deliver to 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 five hundred rupees.

(3) This section shall not apply to a private company nor to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commence business.

75 (1) Without prejudice to the restrictions imposed by the last foregoing section, it shall be the duty of every director who is by the regulations of the company required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the regulations of the company.

Qualification of director.

(2) The office of director of a company shall be vacated, if the director does not within two months from the date of his appointment, or within such shorter time as may be fixed by the regulations 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; and a person vacating office under this section shall be incapable of being re-appointed director of the company until he has obtained his qualification.

(3) If after the expiration of the said period or shorter time any unqualified person acts as a director of the company, he shall be guilty of an offence, and on conviction be liable to a fine not exceeding fifty rupees for every day between the expiration of the said period or shorter time and the last day on which it is proved that he acted as a director.

76 The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

Validity of acts of directors.

77 (1) Every company shall keep at its registered office a register containing the names, addresses, occupations, and nationalities of its directors or managers, and of any persons in accordance with whose directions or instructions the directors of a company are accustomed to act, and any former names that may have been borne by any such persons, and if the nationalities of any such persons are not their nationalities of origin, their nationalities of origin, and send to the Registrar of Companies a copy thereof, and from time to time notify to the Registrar any change among its directors or managers.

List of directors to be sent to Registrar.

(2) If default is made in compliance with this section, the company shall be guilty of an offence, and on conviction be liable to a fine not exceeding fifty rupees for every day during which the default continues; and every director and manager of the company who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty.

Contracts, &c.

78 (1) Contracts on behalf of a company may be made as follows (that is to say):

Form of contracts.

- (i.) Any contract which if made between private persons would be by law required to be in writing, may be made on behalf of the company in writing under the common seal of the company, and may in the same manner be varied or discharged;
- (ii.) Any 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, and may in the same manner be varied or discharged;
- (iii.) Any contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.

(2) All contracts made according to this section shall be effectual in law, and shall bind the company and its successors and all other parties thereto, their heirs, executors, or administrators, as the case may be.

Bills of exchange and promissory notes.

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

Execution of deeds abroad.

80 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 Colony; and every 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.

Mortgages registered under this Ordinance.

81 In any mortgage made by any company registered under this Ordinance there shall be implied the following covenants (unless words expressly negating such implication are contained therein); that is to say, a covenant on the part of the company to pay the money thereby secured, and interest thereon, at the time and rate therein mentioned, a covenant that they have power to mortgage the property and that the same is free from incumbrances, and such mortgage may be in the form set forth in the fourth schedule hereto, or as near thereto as circumstances admit.

Conveyances registered under this Ordinance.

82 In any conveyance made by any company registered under this Ordinance there shall be implied (unless words expressly negating such implication are contained therein) the following covenants on the part of the company (that is to say):

A covenant that, notwithstanding any act or default done by the company, they were at the time of the execution of such conveyance possessed of the lands or premises thereby conveyed as their own absolute property, free from incumbrances occasioned by them, or otherwise for such estate or interest as therein expressed to be conveyed, free from incumbrances occasioned by them.

A covenant that the person to whom such lands or premises are conveyed, his heirs, executors, administrators, and assigns (as the case may be), shall quietly enjoy the same against the company and their successors, and all other persons claiming under them, and be indemnified and saved harmless by the company and their successors from all incumbrances occasioned by the company.

A covenant to warrant and defend the title of the person to whom such lands or premises are conveyed, his heirs, executors, administrators, or assigns, and to grant at its own expense such further deeds as may be necessary to render such conveyance effectual.

Power for company to have official seal for use abroad.

83 (1) A company whose objects require or comprise the transaction of business outside the Colony may, if authorized by its articles, have for use in any territory, district, or place not situate in the Colony, an official seal, which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every territory, district, or place where it is to be used.

(2) A company having such an official seal may, by writing under its common seal, authorize any person appointed for the purpose in any territory, district, or place not situate in the Colony, to affix the same to any deed or other document to which the company is party in that territory, district, or place.

(3) 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.

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

(5) 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.

Prospectus.

84 (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.

Filing of 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 authorized in writing, shall be filed for registration with the Registrar of Companies on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so filed for registration.

(3) The Registrar shall not register any prospectus unless it is dated, and the copy thereof signed, in manner required by this section.

(4) Every prospectus shall state on the face of it that a copy has been filed for registration as required by this section.

(5) If a prospectus is issued without a copy thereof being so filed, the company, and every person who is knowingly a party to the issue of the prospectus, shall be guilty of an offence and on conviction be liable to a fine not exceeding fifty rupees for every day from the date of the issue of the prospectus until a copy thereof is so filed.

85 (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—

Specific requirements as to particulars of prospectus.

- (a) The contents of the memorandum, with the names, descriptions, and addresses of the signatories, and the number of shares subscribed for by them respectively ; and 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 ; and
- (b) 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 ; and
- (c) The names, descriptions, and addresses of the directors or proposed directors ; and
- (d) The minimum subscription on which the directors may proceed to allotment, and 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, and the amount actually allotted, and the amount, if any, paid on the shares so allotted ; and
- (e) 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 ; and
- (f) 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 : Provided that where the vendors or any of them are a firm the members of the firm shall not be treated as separate vendors ; and
- (g) 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 ; and

- (h) The amount (if any) paid within the two preceding years, or payable, as commission 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: Provided that it shall not be necessary to state the commission payable to sub-underwriters; and
 - (i) The amount or estimated amount of preliminary expenses; and
 - (j) The amount paid within the two preceding years or intended to be paid to any promoter and the consideration for any such payment; and
 - (k) The dates of and parties to every material contract, and a reasonable time and place at which any material contract or a copy thereof may be inspected: Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract entered into more than two years before the date of issue of the prospectus; and
 - (l) The names and addresses of the auditors (if any) of the company; and
 - (m) 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; and
 - (n) Where the company is a company having shares of more than one class, the right of voting at meetings of the company conferred by the several classes of shares respectively.
- (2) For the purposes of this section every person shall 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 issue of the prospectus; or
 - (b) The purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or
 - (c) The contract depends for its validity or fulfilment on the result of that issue.
- (3) Where any of the property to be acquired by the company is to be taken on lease, this section shall apply 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) Any condition requiring or binding any applicant for shares or debentures 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.
- (5) Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary in the advertisement to specify the contents of the memorandum or the signatories thereto, and the number of shares subscribed for by them.
- (6) In the event of non-compliance with 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, if he proves that—
- (a) As regards any matter not disclosed, he was not cognizant thereof; or
 - (b) The non-compliance arose from an honest mistake of fact on his part.

Provided that in the event of non-compliance with the requirements contained in paragraph (m) of sub-section (1) of this section no director or other person shall incur any liability in respect of the non-compliance, unless it be proved that he had knowledge of the matters not disclosed.

(7) This section shall not apply to a circular or notice inviting existing members or debenture holders of a company to subscribe either for shares or for debentures of the company, whether with or without the right to renounce in favour of other persons, but, subject as aforesaid, this section shall apply to any prospectus whether issued on or with reference to the formation of a company or subsequently.

(8) The requirements of this section as 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 preliminary expenses, shall not apply in the case of a prospectus issued more than one year after the date at which the company is entitled to commence business.

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

86 (1) A company which does not issue a prospectus on or with reference to its formation shall not allot any of its shares or debentures unless before the first allotment of either shares or debentures there has been filed with the Registrar of Companies 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 authorized in writing, in the form and containing the particulars set out in the second schedule to this Ordinance.

Obligations of companies where no prospectus is used.

(2) This section shall not apply to a private company or to a company which has allotted any shares or debentures before the commencement of this Ordinance.

87 A company 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.

Restriction on alteration of terms mentioned in prospectus or statement in lieu of prospectus.

88 (1) Where a prospectus invites persons to subscribe for shares in or debentures of a company, every person who is a director of the company at the time of the issue of the prospectus, and every person who has authorized the naming of him 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, and every promoter of the company, and every person who has authorized 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—

Liability for statements in prospectus.

(a) With respect to every untrue statement not purporting to be made on the authority of an expert, or of a public official document or statement, that 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) With respect to every untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert, that it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation: Provided that the director, person named as director, promoter, or person who authorized the issue of the prospectus 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) With respect to 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, that it was a correct and fair representation of the statement or copy of or extract from the document ;

or 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
- (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.

(2) Where a company existing at the date of the commencement of this Ordinance has issued shares or debentures, and for the purpose of obtaining further capital by subscriptions for shares or debentures issues a prospectus, a director shall not be liable in respect of any statement therein, unless he has authorized the issue of the prospectus, or has adopted or ratified it.

(3) 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 authorized 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 authorized 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 action or legal proceedings brought against him in respect thereof.

(4) 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 authorized the issue of the prospectus, 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.

(5) 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 by reason of his acting 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.

Allotment.

Restriction as to allotment.

89 (1) No allotment shall be made of any share capital of a company offered to the public for subscription, unless the following conditions have been complied with, namely :

(a) The amount (if any) fixed by the memorandum or articles and named in the prospectus as the minimum subscription upon which the directors may proceed to allotment ; or

(b) If no amount is so fixed and named, 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 fixed and named, or for the whole amount offered for subscription, has been paid to and received by the company.

(2) The amount so fixed and named and the whole amount aforesaid shall be reckoned exclusively of any amount payable otherwise than in cash, and is in this Ordinance referred to as the minimum subscription.

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

(4) If the conditions aforesaid have not been complied with on the expiration of forty days 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 forty-eight days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per centum per annum from the expiration of the forty-eighth day :

Provided that a director shall not be liable if he proves that the loss 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.

(6) This section, except sub-section (3) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

(7) In the case of the first allotment of share capital payable in cash of a company which does not issue any invitation to the public to subscribe for its shares, no allotment shall be made, unless the minimum subscription (that is to say) :

(a) The amount (if any) fixed by the memorandum or articles and named in the statement in lieu of prospectus as the minimum subscription upon which the directors may proceed to allotment ; or

(b) If no amount is so fixed and named, then the whole amount of the share capital other than that issued or agreed to be issued as fully or partly paid up otherwise than in cash ;

has been subscribed and an amount not less than five per centum of the nominal amount of each share payable in cash has been paid to and received by the company.

This sub-section shall not apply to a private company or to a company which has allotted any shares or debentures before the date of the commencement of this Ordinance.

90 (1) An allotment made by a company to an applicant in contravention of the provisions of the last foregoing section shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company 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 authorizes the contravention of any of the provisions of the last foregoing section with respect to allotment, he shall be liable to compensate the company and the allottee respectively for any loss, damages, 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.

91 (1) A 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 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, or in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, on the shares payable in cash ; and

Effect of irregular allotment.

Restrictions on commencement of business.

- (c) There has been filed with the Registrar of Companies an affidavit by the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with; and
- (d) In the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, there has been filed with the Registrar of Companies a statement in lieu of prospectus.

(2) The Registrar of Companies shall, on the filing of this affidavit, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled:

Provided that in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, the Registrar shall not give such a certificate unless a statement in lieu of prospectus has been filed with him.

(3) 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.

(4) 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.

(5) 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 guilty of an offence, and on conviction be liable to a fine not exceeding five hundred rupees for every day during which the contravention continues.

(6) Nothing in this section shall apply to a private company, or to a company registered before the date of the commencement of this Ordinance.

Return as to
allotments.

92 (1) Whenever a company limited by shares makes any allotment of its shares, the company shall within one month thereafter—

- (a) File with the Registrar of Companies 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 due and payable on each share; and
- (b) In the case of shares allotted as fully or partly paid up otherwise than in cash, produce for the inspection and examination of the Registrar of Companies 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, such contracts being duly stamped and file with the Registrar copies verified in the prescribed manner of all such contracts, 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) Where such a contract as above mentioned is not reduced to writing, the company shall within one month after the allotment file with the Registrar of Companies the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing, and those particulars shall be deemed to be an instrument within the meaning of "The Stamp Ordinance, 1909," and the Registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated in manner provided in the said Ordinance.

(3) If default is made in complying with the requirements of this section, every director, manager, secretary, or other officer of the company, who is knowingly a party to the default, shall be guilty of an offence, and on conviction be liable to a fine not exceeding five hundred rupees for every day during which the default continues:

Provided that, in case of default in filing with the Registrar of Companies within one month after the allotment any document required to be filed by this section, the company, or any person liable for the default, may apply to a 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.

Commissions and Discounts.

93 (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 the payment of the commission is authorized by the articles, and the commission paid or agreed to be paid does not exceed the amount or rate so authorized, and if the amount or rate per cent. of the commission paid or agreed to be paid is—

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

- (a) In the case of shares offered to the public for subscription, disclosed in the prospectus ; or
- (b) 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 with the Registrar of Companies, and, where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice.

(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 of 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.

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

94 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.

Statement in balance sheet as to commissions and discounts.

Payment of Interest out of Capital.

95 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 :

Power of company to pay interest out of capital in certain cases.

Provided that—

- (1) No such payment shall be made unless the same is authorized by the articles or by special resolution ;
- (2) No such payment, whether authorized by the articles or by special resolution, shall be made without the previous sanction of the Governor in Executive Council ;
- (3) Before sanctioning any such payment the Governor in Executive Council may, at the expense of the company, appoint a person to inquire and report to them 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 ;
- (4) The payment shall be made only for such period as may be determined by the Governor in Executive Council, 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 ;
- (5) The rate of interest shall in no case exceed four per centum per annum, or such lower rate as may for the time being be prescribed by the Governor in Executive Council ;
- (6) 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 ;
- (7) 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.

Certificates of Shares, &c.

Limitation of time for issue of certificates.

96 (1) Every company shall, within two months after the allotment of any of its shares, debentures, or debenture stock, and within two months 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, the debentures, and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures, or debenture stock otherwise provide.

(2) If default is made in complying with the requirements of this section, the company, and every director, manager, secretary, and other officer of the company who is knowingly a party to the default, shall be guilty of an offence, and on conviction be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Information as to Mortgages, Charges, &c.

Registration of mortgages and charges in the Colony.

97 (1) Every mortgage or charge created after the date of the commencement of this Ordinance by a company registered in the Colony and being either—

- (a) A mortgage or charge for the purpose of securing any issue of debentures ; or
- (b) A mortgage or charge on uncalled share capital of the company ; or
- (c) A mortgage or charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale ; or
- (d) A mortgage or charge on any immovable property wherever situate, or any interest therein ; or
- (e) A mortgage or charge on any book debts of the company ; or
- (f) A floating charge on the undertaking or property of the company ;

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 the prescribed particulars of the mortgage or charge, together with the instrument (if any) by which the mortgage or charge is created or evidenced, or a copy thereof verified in the prescribed manner, are filed with the Registrar of Companies for registration in manner required by this Ordinance within twenty-one days after the date of its creation, but without

prejudice to any contract or obligation for repayment of the money thereby secured, and when a mortgage or charge becomes void under this section, the money secured thereby shall immediately become payable ;

Provided that—

- (i.) In the case of a mortgage or charge created out of the Colony comprising solely property situate outside the Colony, twenty-one 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 Colony, shall be substituted for twenty-one days after the date of the creation of the mortgage or charge, as the time within which the particulars and instrument or copy are to be delivered to the Registrar ; and
- (ii.) Where the mortgage or charge is created in the Colony, but comprises property outside the Colony, the instrument creating or purporting to create the mortgage or charge or a copy thereof verified in the prescribed manner may be filed, notwithstanding that further proceedings may be necessary to make the mortgage or charge valid or effectual according to the law of the country in which the property is situate ; and
- (iii.) Where 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 mortgage or charge on those book debts ; and
- (iv.) The holding of debentures entitling the holder to a charge on land shall not be deemed to be an interest in immovable property.

(2) The Registrar shall keep, with respect to each company, a register in the prescribed form of all the mortgages and charges created by the company after the date of the commencement of this Ordinance and requiring registration under this section, and shall, on payment of the prescribed fee, enter in the register, with respect to every such mortgage or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge.

(3) 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 filed with the Registrar within twenty-one 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, the following particulars :

- (a) The total amount secured by the whole series ; and
- (b) The dates of the resolutions authorizing 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 copy thereof verified in the prescribed manner, or, if there is no such deed, one of the debentures of the series, and the Registrar shall, on payment of the prescribed fee, enter those particulars in the register :

Provided that, where more than one issue is made of debentures in the series, there shall be sent 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.

(4) 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 sent for registration under this section shall include particulars as to the amount or rate per centum 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.

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

(6) The company shall cause a copy of every certificate of registration given under this section to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the mortgage or charge so registered :

Provided that nothing in this sub-section shall be construed as requiring a company to cause a certificate of registration of any mortgage or charge so given to be endorsed on any debenture or certificate of debenture stock which has been issued by the company before the mortgage or charge was created.

(7) It shall be the duty of the company to send to the Registrar for registration the particulars of every mortgage or charge created by the company and of the issues of debentures of a series requiring registration under this section, but registration of any such mortgage or charge may be effected on the application of any person interested therein.

Where the 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 on the registration.

(8) The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee, not exceeding one rupee for each inspection.

(9) Every company shall cause a copy of every instrument creating any mortgage or charge requiring registration under this section 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 such debenture shall be sufficient.

Registration of enforcement of security.

98 (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 under any powers contained in any instrument, he shall within seven days from the date of the order or of the appointment under the powers contained in the instrument give notice of the fact to the Registrar of Companies, and the Registrar shall, on payment of the prescribed fee, enter the fact in the register of mortgages and charges.

(2) If any person makes default in complying with the requirements of this section, he shall be guilty of an offence, and on conviction be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Filing of accounts of receivers and managers.

99 (1) Every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument, and who has taken possession, shall, once in every half-year while he remains in possession, and also on ceasing to act as receiver or manager, file with the Registrar of Companies an abstract in the prescribed form, of his receipts and payments during the period to which the abstract relates, and shall also on ceasing to act as receiver or manager file with the Registrar notice to that effect, and the Registrar shall enter the notice in the register of mortgages and charges.

(2) Every receiver or manager who makes default in complying with the provisions of this section shall be guilty of an offence, and on conviction be liable to a fine not exceeding five hundred rupees.

100 The court on being satisfied that the omission to register a mortgage or charge within the time hereinbefore required, or that the omission or misstatement of any particular with respect to any such mortgage or charge, 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.

Rectification of register of mortgages.

101 The Registrar of Companies may, on evidence being given to his satisfaction that the debt for which any registered mortgage or charge was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register, and shall, if required and upon payment of the prescribed fee not exceeding two rupees for each copy, furnish the company with a copy thereof.

Entry of satisfaction.

102 The Registrar of Companies shall keep a chronological index, in the prescribed form and with the prescribed particulars, of the mortgages or charges registered with him under this Ordinance.

Index to register of mortgages and charges.

103 (1) If any company makes default in sending to the Registrar of Companies for registration the particulars of any mortgage or charge created by the company, and of the issues of debentures of a series requiring registration with the Registrar under the foregoing provisions of this Ordinance, then, unless the registration has been effected on the application of some other person, the company, and every director, manager, secretary, or other person who is knowingly a party to the default, shall on conviction be guilty of an offence, and be liable to a fine not exceeding five hundred rupees for every day during which the default continues.

Penalties.

(2) Subject as aforesaid, if any company makes default in complying with any of the requirements of this Ordinance as to the registration with the Registrar of any mortgage or charge created by the company, the company and every director, manager, and other officer of the company, who knowingly and wilfully authorized or permitted the default shall, without prejudice to any other liability, be guilty of an offence, and be liable on summary conviction to a fine not exceeding one thousand rupees.

(3) If any person knowingly and wilfully authorizes or permits the delivery of any debenture or certificate of debenture stock requiring registration with the Registrar under the foregoing provisions of this Ordinance without a copy of the certificate of registration being endorsed upon it, he shall, without prejudice to any other liability, be guilty of an offence, and be liable on summary conviction to a fine not exceeding one thousand rupees.

104 (1) Every limited company shall keep a register of mortgages and enter therein all mortgages and charges specifically affecting property of the company, giving in each case a short description of the property mortgaged or charged, the amount of the mortgage or charge, and (except in the case of securities to bearer) the names of the mortgagees or persons entitled thereto.

Company's register of mortgages.

(2) If any director, manager, or other officer of the company knowingly and wilfully authorizes or permits the omission of any entry required to be made in pursuance of this section, he shall be guilty of an offence, and on conviction be liable to a fine not exceeding five hundred rupees.

105 (1) The copies of instruments creating any mortgage or charge requiring registration under this Ordinance with the Registrar of Companies, and the register of mortgages kept in pursuance of the last foregoing section, shall be open at all reasonable times to the inspection of any creditor or member of the company without fee, and the register of mortgages shall also be open to the inspection of any other person on payment of such fee, not exceeding fifty cents for each inspection, as the company may prescribe.

Right to inspect copies of instruments creating mortgages and charges and company's register of mortgages.

(2) If inspection of the said copies or register is refused, any officer of the company refusing inspection, and every director and manager of the company authorizing or knowingly and wilfully permitting the refusal, shall be guilty of an offence, and on conviction be liable to a fine not exceeding fifty rupees, and a further fine not exceeding ten rupees for every day during which the refusal continues; and, in addition to the above penalty, the court may by order compel an immediate inspection of the copies or register.

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

106 (1) Every register of holders of debentures of a company shall, except when closed in accordance with the articles during such period or periods (not exceeding in the whole thirty days in any year) as may be specified in the articles, 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, and every such holder may require a copy of the register or any part thereof on payment of twenty-five cents for every one hundred words or fractional part thereof required to be copied.

(2) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust deed of the sum of fifty cents or such less sum as may be prescribed by the company, or, where the trust deed has not been printed, on payment of twenty-five cents for every one hundred words or fractional part thereof required to be copied.

(3) If inspection is refused, or a copy is refused or not forwarded, the company shall be guilty of an offence, and on conviction be liable to a fine not exceeding fifty rupees, and to a further fine not exceeding ten rupees for every day during which the refusal continues, and every director, manager, secretary, or other officer of the company who knowingly authorizes or permits the refusal shall incur the like penalty, and the court may by order compel an immediate inspection of the register.

Debentures and Floating Charges.

Perpetual debentures.

107 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 Ordinance, shall not be invalid by reason only that thereby the debentures are made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule to the contrary notwithstanding.

Power to re-issue redeemed debentures in certain cases.

108 (1) Where either before or after the passing of this Ordinance a company has redeemed any debentures previously issued, the company, unless the articles or the conditions of issue expressly otherwise provide, or unless the debentures have been redeemed in pursuance of any obligation on the company so to do (not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns), shall have power, and shall be deemed always to have had power, to keep the debentures alive for the purposes of re-issue, and where a company has purported to exercise such a power, the company shall have power, 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, and upon such a re-issue the person entitled to the debentures shall have, and shall be deemed always to have had, the same rights and priorities as if the debentures had not previously been issued.

(2) Where with the object of keeping debentures alive for the purpose of re-issue they have either before or after the passing of this Ordinance been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a re-issue for the purposes of this section.

(3) Where a company has either before or after the passing of this Ordinance 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.

(4) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, whether the re-issue or issue was made before or after the passing of this Ordinance, shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued :

Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp duty and penalty.

(5) Nothing in this section shall prejudice—

(a) The operation of any judgment or order of a court of competent jurisdiction pronounced or made before the date of the commencement of this Ordinance as between the parties to the proceedings in which the judgment was pronounced or the order made, and any appeal from any such judgment or order shall be decided as if this Ordinance had not been passed ; or

(b) Any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished reserved to a company by its debentures or the securities for the same.

109 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.

Specific performance of contract to subscribe for debentures.

110 (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 which in every winding up are under the provisions of part IV. of this Ordinance relating to preferential payments to be paid in priority to all other debts, 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 of the debentures.

Payments of certain debts out of assets subject to floating charge in priority to claims under the charge.

(2) The periods of time mentioned in the said provisions of part IV. of this Ordinance shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.

(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.

Statement to be published by Banking and certain other Companies.

111 (1) Every company being a limited banking company, or an insurance company, or a deposit, provident, or benefit society shall, before it commences business, and also on the first Monday in February and the first Tuesday in August in every year during which it carries on business, make a statement in the form marked C in the first schedule to this Ordinance, or as near thereto as circumstances will admit.

Certain companies to publish statement in schedule.

(2) A copy of the statement shall be displayed, and until the display of the next following statement, shall be kept displayed 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 twenty-five cents.

(4) If default is made in compliance with this section, the company shall be guilty of an offence, and on conviction be liable to a fine not exceeding fifty rupees for every day during which the default continues; and every director and manager of the company who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty.

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

Inspection and Audit.

Investigation of affairs of company by inspectors.

112 (1) The Governor in Executive Council may appoint one or more competent inspectors to investigate the affairs of any company and to report thereon in such manner as he may direct—

- (i.) In the case of a company having a share capital, on the application of members holding not less than one-tenth of the shares issued ;
- (ii.) 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 Governor in Executive Council may require for the purpose of showing that the applicants have good reason for, and are not actuated by malicious motives in requiring, the investigation ; and the Governor in Executive Council may, before appointing an inspector, require the applicants to give security 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) An inspector may examine on oath the officers and agents of the company in relation to its business, and may administer an oath accordingly.

(5) If any officer or agent refuses to produce any book or document which under this section it is his duty to produce, or to answer any question relating to the affairs of the company, he shall be guilty of an offence, and on conviction be liable to a fine not exceeding fifty rupees in respect of each offence.

(6) On the conclusion of the investigation the inspectors shall report their opinion to the Governor in Executive Council, and a copy of the report shall be forwarded by the Governor in Executive Council 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. The report shall be written or printed as the Governor in Executive Council direct.

(7) All expenses of, and incidental to, the investigation shall be defrayed by the applicants, unless the Governor in Executive Council direct the same to be paid by the company, which the Governor in Executive Council is hereby authorized to do.

Power of company to appoint inspectors.

113 (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 Governor in Executive Council, except that, instead of reporting to the Governor in Executive Council, they shall report in such manner and to such persons as the company in general meeting may direct.

(3) Officers and agents of the company shall incur the like penalties in case of refusal to produce any book or document required to be produced to inspectors so appointed, or to answer any question, as they would have incurred if the inspectors had been appointed by the Governor in Executive Council.

Report of inspectors to be evidence.

114 A copy of the report of any inspectors appointed under this Ordinance, authenticated by the seal of the company whose affairs they have investigated, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report.

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

Appointment and remuneration of auditors.

(2) If an appointment of auditors is not made at an annual general meeting, the Governor in Executive Council 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 director or officer of the company shall not be capable of being appointed auditor of the company.

(4) 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 provision, 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 provision, be sent or given at the same time as the notice of the annual general meeting.

(5) The first auditors of the company may be appointed by the directors before the statutory meeting, and if so appointed shall hold office until the first annual general meeting, unless previously removed by a resolution of the shareholders in general meeting, in which case the shareholders at that meeting may appoint auditors.

(6) 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.

(7) 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 statutory meeting, or to fill any casual vacancy, may be fixed by the directors.

116 (1) Every auditor of a company shall have a right of access at all times to the 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.

Powers and duties of auditors.

(2) The auditors shall make a report to the shareholders 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 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.

(3) The balance sheet shall be signed on behalf of the board by two of the directors of the company, or if there is only one director, by that director, and the auditors' report shall be attached to the balance sheet, or there shall be inserted at the foot of the balance sheet a reference to the report, and the report shall be read before the company in general meeting, and shall be open to inspection by any shareholder. Any shareholder shall be entitled to be furnished with a copy of the balance sheet and auditors' report at a charge not exceeding twenty-five cents for every hundred words or fractional part thereof.

(4) 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 or containing such reference to that report as is required by this section, the company, and every director, manager, secretary, or other officer of the company who is knowingly a party to the default, shall be guilty of an offence, and on conviction be liable to a fine not exceeding five hundred rupees.

(5) In the case of a banking company—

(a) If the company has branch banks beyond the limits of the Colony, it shall be sufficient if the auditor is allowed access to such copies of and extracts from the books and accounts of any such branch as have been transmitted to the head office of the company in the Colony ; and

(b) The balance sheet must be signed by the secretary or manager (if any), and where there are more than three directors of the company, by at least three of those directors, and where there are not more than three directors, by all the directors.

Rights of preference shareholders, &c., as to receipt and inspection of reports, &c.

117 (1) Holders of preference shares and debentures of a company shall have the same right to receive and inspect the balance sheets of the company and the reports of the auditors and other reports as is possessed by the holders of ordinary shares in the company.

(2) This section shall not apply to a private company, nor to a company registered before the date of the commencement of this Ordinance.

Carrying on Business with less than the legal Minimum of Members.

Prohibition of carrying on business with fewer than seven or, in the case of a private company, two members.

118 If at any time the number of members of a company is reduced, in the case of a private company, below two, or, in the case of any other company, below seven, and it carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months, and is cognizant of the fact that it is carrying on business with fewer than two members, or seven 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.

Service and Authentication of Documents.

Service of documents on company.

119 A document may be served on a company by leaving it at or sending it by post to the registered office of the company.

Authentication of documents.

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

Tables and Forms.

Application and alteration of tables and forms.

121 (1) The forms in the third schedule to this Ordinance or forms as near thereto as circumstances admit shall be used in all matters to which those forms refer.

(2) The Governor in Executive Council may alter any of the tables and forms in the first schedule to this Ordinance so that it does not increase the amount of fees payable to the Registrar in the said schedule mentioned, and may alter or add to the forms in the said third schedule.

(3) Any such table or form, when altered, shall be published in the "Government Gazette," and thenceforth shall have the same force as if it were included in one of the schedules to this Ordinance, but no alteration made by the Governor in Executive Council in table A in the said first schedule shall affect any company registered before the alteration, or repeal, as respects that company, any portion of that table.

(4) In addition to the powers hereinbefore conferred by this section, the Governor in Executive Council may make rules for all or any matters which by this Ordinance are to be prescribed by him :

(5) All such rules shall be published in the "Government Gazette" and when so published shall have the same force and effect as if they were enacted in this Ordinance.

Arbitrations.

122 (1) A company may by writing under its common seal agree to refer and may refer to arbitration, any existing or future difference between itself and any other company or person.

Arbitration
between
companies
and others.

(2) Companies parties to the arbitration may delegate to the arbitrator power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by their directors or other managing body.

(3) Subject to the express provisions of this section, the provisions of the Arbitration Ordinance, 1866, and of any other Ordinance for the time being relating to arbitrations shall apply to arbitrations between companies and persons in pursuance of this Ordinance.

Power to Compromise.

123 (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the court may, on the application in a summary way of the company or of any creditor or member of the company or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the court directs.

Power to
compromise
with creditors
and members.

(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 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) In this section the expression "company" means any company liable to be wound up under this Ordinance.

Meaning of "Private Company."

124 (1) For the purposes of this Ordinance the expression "private company" means a company which by its articles—

Meaning of
"private
company

- (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 or debentures of the company.

(2) A private company may, subject to anything contained in the memorandum or articles, by passing a special resolution and by filing with the Registrar of Companies 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 an affidavit as the company, if a public company, would have had to file before commencing business, turn itself into a public company, and upon the filing of the said documents the Registrar shall record the change in his books relating to the company.

(3) Where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this section, be treated as a single member.

(4) Where a private company makes default in complying with any of the provisions of this section required to be included in the articles of the company, the company shall cease to be entitled to the privileges and exemptions conferred

on private companies under the provisions of sections 29 (3), 117, 118, and 132 (iv.) of this Ordinance, and thereupon the said provisions shall apply to the company as if it were not a private company:

Provided that the court, on being satisfied that the failure to comply 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.

(5) Every private company shall send with the annual list of members and summary required to be sent under section 29 of this Ordinance a certificate signed by a director or the secretary 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, issued any invitation to the public to subscribe for any shares or debentures of the company; and, where the list of members discloses the fact that the number of members of the company exceeds fifty, also a certificate so signed that such excess consists wholly of persons who under this section are to be excluded in reckoning the number of fifty.

PART IV.

WINDING UP.

Preliminary.

Modes of winding up.

125 (1) The winding up of a company may be either—

- (i.) By the court; or
- (ii.) Voluntary; or
- (iii.) Subject to the supervision of the court.

(2) The provisions of this Ordinance with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of those modes.

(3) Provided always that the following provisions shall apply to every company in whose articles of association is contained any provision such as is mentioned in section 16(1) of this Ordinance:

- (i.) A resolution for the voluntary winding up of the company shall be of no effect, unless the Governor in Executive Council in his discretion authorizes or ratifies it by a written consent;
- (ii.) The court which has jurisdiction to wind up the company may in its discretion refuse to make a winding-up order;
- (iii.) In the exercise of this discretion, the Governor in Executive Council or the court, as the case may be, shall be guided by the consideration whether the winding up is *bona fide* with a view to the discontinuance of the undertaking, or is with a view to continuing the undertaking free from any restrictions or limitations such as are mentioned in section 16 (1) of this Ordinance which are contained in the company's articles of association or any of such restrictions or limitations;
- (iv.) The Governor in Executive Council in giving consent or the court in making a winding-up order, as the case may be, may impose such terms or conditions for giving effect to this Ordinance as he or it thinks fit.

Contributories.

Liability as contributories of present and past members.

126 (1) In the event of a company being wound up, every present and past member shall, subject to the provisions of this section, 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, with the qualifications following (that is to say):

- (i.) 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;

- (ii.) 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 ;
- (iii.) 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 Ordinance ;
- (iv.) 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 ;
- (v.) In the case of a company limited by guarantee, no contribution shall 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 ;
- (vi.) Nothing in this Ordinance 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 ;
- (vii.) 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, in pursuance of this Ordinance, 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—

- (i.) 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 ;
- (ii.) 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 ;
- (iii.) 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.

127 The term " contributory " means every person liable to contribute to the assets of a company in the event of its being wound up, and, in all proceedings for determining and in all proceedings prior to the final determination of the persons who are to be deemed contributories, includes any person alleged to be a contributory.

Definition of contributory.

128 The liability of a contributory shall create a debt accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

Nature of liability of contributory.

129 (1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives and his heirs and devisees 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 contributories accordingly

Contributories in case of death of member.

(2) Where the personal representatives are placed on the list of contributories, the heirs or devisees need not be added, but they may be added as and when the court thinks fit.

(3) If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the movable and immovable property of the deceased contributory, or either of them, and of compelling payment thereof of the money due.

Contributories
in case
of bankruptcy
of member.

130 If a contributory becomes insolvent or bankrupt, either before or after he has been placed on the list of contributories, then—

(a) His assignee or 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 insolvent or bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any money due from the insolvent or bankrupt in respect of his liability to contribute to the assets of the company ; and

(b) There may be proved against the estate of the insolvent or bankrupt the estimated value of his liability to future calls as well as calls already made.

Provision as
to married
women.

131 (1) The husband of a female contributory married before the date of the commencement of the Married Women's Property Ordinance, No. — of 19 —, to whom the provisions of "The Matrimonial Rights and Inheritance Ordinance, 1876," applies, shall, during the continuance of the marriage, be liable as respects any liability attaching to any shares acquired by her before that date, to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be a contributory accordingly.

(2) Subject as aforesaid, nothing in this Ordinance shall affect the provisions of the Married Women's Property Ordinance, No. — of 19 —.

Winding up by Court.

Circumstances
in which
company may
be wound
up by court.

132 A company may be wound up by the court—

(i.) If the company has by special resolution resolved that the company be wound up by the court ;

(ii.) If default is made in filing the statutory report or in holding the statutory meeting ;

(iii.) If the company does not commence its business within a year from its incorporation, or suspends its business for a whole year ;

(iv.) If the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven ;

(v.) If the company is unable to pay its debts ;

(vi.) If the court is of opinion that it is just and equitable that the company should be wound up.

Company
when deemed
unable to pay
its debts.

133 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 five hundred rupees then due, has served on the company, by leaving the same at its registered office, 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 satisfaction of a decree or order of any court in favour of a creditor of the company cannot be obtained within ten days ; 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.

134 (1) The court having jurisdiction to wind up companies registered in the Colony shall be the District Court having jurisdiction in the place in which the registered office of the company is situated.

Jurisdiction to wind up companies.

(2) Every such court shall, in addition to its ordinary powers, have the same power of enforcing any orders made by it in pursuance of this Ordinance as it has in relation to other matters within the jurisdiction of such court respectively.

(3) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong court.

(4) For the purposes of this section the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.

135 (1) The winding up of a company by the court or any proceedings in the winding up may at any time and at any stage, and either with or without application from any of the parties thereto, be transferred from one District Court to another District Court, or may be retained in the court in which the proceedings were commenced, although it may not be the court in which they ought to have been commenced.

Transfer of proceedings

(2) The powers of transfer given by the foregoing provisions of this section may, subject to and in accordance with general rules, be exercised by the Chief Justice or any Judge of the Supreme Court, or, as regards any case within the jurisdiction of any other court, by the Judge of that court.

136 (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—

Provisions as to applications for winding up.

(a) A contributory shall not be entitled to present a petition for winding up a company unless—

(i.) Either the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven; 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; and

(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 shareholder, 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 official receiver attached to the court, as well as by any other person authorized 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 Ordinance 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 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.

Effect of winding-up order.

137 An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

Commencement of winding up by court.

138 A 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.

Power to stay or restrain proceedings against company.

139 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—

- (a) Where any action or proceeding against the company is pending in a District Court or in the Supreme Court, apply to the court in which the action or proceeding is pending for a stay of proceedings therein ; and
- (b) Where any other action or proceeding is pending against the company, apply to the court having jurisdiction to wind up the company to restrain further proceedings in the action or proceeding ;

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.

Powers of court on hearing petition.

140 (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 deems just, 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 order the costs to be paid by any persons who, in the opinion of the court, are responsible for the default.

Actions stayed on winding-up order.

141 When a winding-up order has been made, 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.

Copy of order to be forwarded to Registrar.

142 On the making of a winding-up order, a copy of the order must forthwith be forwarded by the company to the Registrar of Companies, who shall make a minute thereof in his books relating to the company.

Power of court to stay winding up.

143 The court may at any time after an order for winding up, on the application of any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

Court may have regard to wishes of creditors or contributories.

144 The court may, as to all matters relating to a winding up, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

Official Receiver.

Definition of official receiver.

145 (1) For the purposes of this Ordinance so far as it relates to the winding up of companies by the court, the term "official receiver" shall mean an officer appointed for the purpose by the Governor.

(2) Any such officer shall for the purposes of his duties under this Ordinance be styled the official receiver.

Statement of company's affairs to be submitted to official receiver.

146 (1) Where the court has made a winding-up order, there shall be made out and submitted to the official receiver 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 official receiver may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the time of the winding-up order the directors and by the person who is at that time the secretary or other chief officer of the company, or by such of the persons being or having been directors or officers of the company, or having taken part in the formation of the company at any time within one year before the winding-up order, as the official receiver, subject to the direction of the court, may require to submit and verify the same.

(3) The statement shall be submitted within fourteen days from the date of the order, or within such extended time as the official receiver 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 official receiver, 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 official receiver 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 guilty of an offence, and on conviction be liable to a fine not exceeding one hundred rupees for every day during which the default continues.

(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. But any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court, and shall be punishable accordingly on the application of the liquidator or of the official receiver.

147 (1) Where the court has made a winding-up order, the official receiver shall, as soon as practicable after receipt of the statement of the company's affairs, submit a preliminary report to the court—

Report by
official receiver.

(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 official receiver 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.

Liquidators.

148 (1) For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the court may impose, the court may appoint a liquidator or liquidators.

Appointment,
remuneration,
and title of
liquidators.

(2) The court may make such an appointment provisionally at any time after the presentation of a petition and before the making of an order for winding up.

(3) (a) If a provisional liquidator is appointed before the making of a winding-up order, the official receiver or any other fit person may be appointed.

(b) On a winding-up order being made, the official receiver shall by virtue of his office become the provisional liquidator, and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such.

(c) When a person other than the official receiver is appointed liquidator, he shall not be capable of acting as liquidator until he has notified his appointment to the Registrar of Companies and given security in the prescribed manner to the satisfaction of the court.

(4) If more than one liquidator is appointed by the court, the court shall declare whether any act by this Ordinance required or authorized to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(5) A liquidator appointed by the court may resign or, on cause shown, be removed by the court.

(6) A vacancy in the office of a liquidator appointed by the court shall be filled by the court, and the official receiver shall by virtue of his office be the liquidator during the vacancy.

(7) Where a person other than the official receiver is appointed liquidator, he shall receive such salary or remuneration by way of percentage or otherwise as the court may direct; and, if more such persons than one are appointed liquidators, their remuneration shall be distributed among them in such proportions as the court directs.

(8) A liquidator shall be described, where a person other than the official receiver is liquidator, by the style of the liquidator, and, where the official receiver is liquidator, by the style of the official receiver and liquidator, and of the particular company in respect of which he is appointed, and not by his individual name.

(9) The acts of a liquidator shall be valid, notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

Custody of
company's
property.

149 In a winding up by the court the liquidator shall take into his custody, or under his control, all the property and things in action to which the company is or appears to be entitled.

Powers of
liquidator.

150 (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 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 employ a proctor or other agent to take any proceedings or do any business which the liquidator is unable to take or do himself; but the sanction in this case must be obtained before the employment, except in cases of urgency, and in those cases it must be shown that no undue delay took place in obtaining the sanction.

(2) The liquidator in a winding up by the court shall have power—

- (a) To sell the movable and immovable 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;
- (b) 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;
- (c) 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 rateably with the other separate creditors;
- (d) 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;
- (e) To raise on the security of the assets of the company any money requisite:

(f) To take out in his official name letters of administration to 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;

(g) 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) Where a liquidator is provisionally appointed by the court, the court may limit and restrict his powers by the order appointing him.

151 (1) When a winding-up order has been made by the court, the official receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of—

Meetings of creditors and contributories in winding up.

(a) Determining whether or not an application is to be made to the court for appointing a liquidator in the place of the official receiver; and

(b) Determining 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 the members of the committee if appointed.

(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 mentioned in the foregoing provisions of this section, the court shall decide the difference and make such order thereon as the court may think fit.

(3) In case a liquidator is not appointed by the court, the official receiver shall be the liquidator of the company.

152 Where in the winding up of a company by the court a person other than the official receiver is appointed liquidator, he shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid as may be requisite for enabling that officer to perform his duties under this Ordinance

Liquidator to give information to official receiver.

153 (1) Where in the winding up of a company by the court a person other than the official receiver is appointed liquidator, he shall open an account in the name of the company's estate at such bank as the Colonial Treasurer directs:

Payments of liquidator in winding up into bank.

Provided that, if the committee of inspection satisfy the Colonial Treasurer that for the purpose of carrying on the business of the company or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the Colonial Treasurer shall, on the application of the committee of inspection, authorize the liquidator to make his payments into and out of such other bank as the committee may select, and thereupon those payments shall be made in the prescribed manner.

(2) If any such liquidator at any time retains for more than ten days a sum exceeding five hundred rupees, or such other amount as the official receiver in any particular case authorize him to retain, then, unless he explains the retention to the satisfaction of the official receiver, he shall pay interest on the amounts 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 court, and shall be liable to pay any expenses 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.

(4) Where the official receiver becomes or is appointed liquidator, he shall, in such manner and at such times as the Colonial Treasurer may direct, pay the money received by him to the Companies Liquidation Account at such bank as the Colonial Treasurer may direct.

Audit of liquidator's accounts in winding up.

154 (1) Where in the winding up of a company by the court a person other than the official receiver is appointed liquidator, he shall, at such times as may be prescribed, but not less than twice in each year during his tenure of office, send to the official receiver an account of his receipts and payments as liquidator.

(2) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by an affidavit in the prescribed form.

(3) The official receiver shall cause the account to be audited, and for the purpose of the audit the liquidator shall furnish the official receiver with such vouchers and information as he may require, and the official receiver 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, one copy thereof shall be filed and kept by the official receiver and the other copy shall be filed with the court, and each copy shall be open to the inspection of any creditor, or of any person interested.

(5) The official receiver shall cause the account when audited or a summary thereof to be printed, and shall send a printed copy of the account or summary by post to every creditor and contributory.

(6) The accounts of an official receiver who becomes or is appointed liquidator under this Ordinance shall be audited in the prescribed manner, and the official receiver shall make such returns and give such information as may be prescribed.

Books to be kept by liquidator in winding up.

155 Every liquidator of a company which is being wound up by the court shall keep, in manner prescribed, 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, and any creditor or contributory may, subject to the control of the court, personally or by his agent inspect any such books.

Release of liquidators.

156 (1) When the liquidator of a company which is being wound up by the court has realized all the property of the company, or so much thereof as can, in his opinion, be realized without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, he shall cause a report on his accounts to be prepared, and, on his complying with all the requirements of the court, 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.

157 (1) Subject to the provisions of this Ordinance, 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.

Exercise and control of liquidator's powers.

(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 appointing the 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 Ordinance, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

(5) If any person is aggrieved by any act or decision of the liquidator, that person 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.

158 (1) Where a person other than the official receiver is appointed liquidator, the official receiver shall take cognizance 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 ordinance, rules, or otherwise with respect to the performance of his duties, or if any complaint is made to the official receiver by any creditor or contributory in regard thereto, the official receiver shall inquire into the matter, and take such action thereon as he may think expedient.

Control of official receiver over liquidators.

(2) The official receiver 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 official receiver think fit, apply to the court to examine him or any other person on oath concerning the winding up.

(3) The official receiver may also direct a local investigation to be made of the books and vouchers of the liquidator.

Committee of Inspection, Special Manager, Receiver.

159 (1) A committee of inspection appointed in pursuance of this Ordinance shall 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.

Committee of inspection in winding up.

(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) Any member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) If a member of committee becomes insolvent or 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) Any 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, re-appoint the same or appoint another creditor or contributory to fill the vacancy.

(8) The continuing members of the committee, if not less than two, may act, notwithstanding any vacancy in the committee.

(9) If there is no committee of inspection, any act or thing or any direction or permission by this Ordinance authorized or required to be done or given by the committee may be done or given by the court on the application of the liquidator.

Power to appoint special manager.

160 (1) Where the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he 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 to, and the court may on such application, appoint a special manager thereof 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 entrusted to him by the court.

(2) The special manager shall give such security and account in such manner as the court directs.

(3) The special manager shall receive such remuneration as may be fixed by the court.

Power to appoint official receiver as receiver for debenture holders or creditors.

161 Where an application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the court, the official receiver may be so appointed.

Ordinary Powers of Court.

Settlement of list of contributories and application of assets.

162 (1) As soon as may be after making a winding-up order 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 Ordinance, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities.

(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 to the debts of others.

Power to require delivery of property.

163 The court may, at any time after making a winding-up order, require any contributory for the time being settled 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 *primâ facie* entitled.

Power to order payment of debts by contributory.

164 (1) The court may, at any time after making a winding-up order, make an order on any contributory for the time being settled 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 Ordinance.

(2) The court in making such an order may, 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 may, 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) But 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.

165 (1) The court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by 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.

Power of court to make calls.

(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.

166 (1) The court may order any contributory, purchaser, or other person from whom money is due to the company to pay the same into such bank as the court may direct 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.

Power to order payment into bank.

(2) All moneys and securities paid or delivered into such bank in the event of a winding up by the court shall be subject in all respects to the orders of the court.

167 (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.

Order on contributory conclusive evidence.

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons, and in all proceedings, except proceedings against the immovable property of a deceased contributory, in which case the order shall be only *prima facie* evidence for the purpose of charging his immovable property, unless his heirs or devisees were on the list of contributories at the time of the order being made.

168 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.

Power to exclude creditors not proving in time.

169 The court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

Adjustment of rights of contributories.

170 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.

Power to order costs.

171 (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.

Dissolution of company.

(2) The order shall be reported within fifteen days of the making thereof by the liquidator to the Registrar of Companies, 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 guilty of an offence, and on conviction be liable to a fine not exceeding fifty rupees for every day during which he is in default.

Delegation to liquidator of certain powers of court.

172 General rules may be made for enabling or requiring all or any of the powers and duties conferred and imposed on the court by this Ordinance, in respect of the matters following, to be exercised or performed by the liquidator as an officer of the court, and subject to the control of the court; that is to say, the powers and duties of the court in respect of—

- (a) Holding and conducting meetings to ascertain the wishes of creditors and contributories;
- (b) Settling lists of contributories and rectifying the register of members where required, and collecting and applying the assets;
- (c) Requiring delivery of property or documents to the liquidator;
- (d) Making calls;
- (e) Fixing 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.

Extraordinary Powers of Court.

Power to summon persons suspected of having property of company.

173 (1) The court may, after it has made 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 trade, dealings, affairs or property of the company.

(2) The court may examine him on oath concerning the same, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(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.

Power to order public examination of promoters, directors, &c.

174 (1) When an order has been made for winding up a company by the court, and the official receiver has made a further report under this Ordinance 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, 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 publicly 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 official receiver shall take part in the examination, and for that purpose may employ a proctor with or without counsel.

(3) The liquidator, where the official receiver is not the liquidator, and any creditor or contributory may also take part in the examination either personally or by proctor or counsel.

(4) The court may put such questions to the person examined as the court thinks fit.

(5) 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.

(6) A person ordered to be examined under this section shall at his own cost, before his examination, be furnished with a copy of the official receiver's report, and may at his own cost employ a proctor 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 he is, in the opinion of the court, exculpated from any charges made or suggested against him, the court may allow him such costs as in its discretion it may think fit.

(7) 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.

(8) The court may, if it thinks fit, adjourn the examination from time to time.

175 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 Colony, 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.

Power to arrest absconding contributory.

176 Any powers by this Ordinance conferred on the court shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

Powers of court cumulative.

Enforcement of and Appeal from Orders.

177 Orders made by the court under this Ordinance may be enforced in the same manner as orders made in any action pending therein.

Power to enforce orders.

178 An appeal from any order or decision made or given in the winding up of a company by the court under this Ordinance shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the court in cases within its ordinary jurisdiction.

Appeals from order.

Voluntary Winding Up.

179 A company may be wound up voluntarily—

Circumstances in which company may be wound up voluntarily.

- (1) 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;
- (2) If the company resolves by special resolution that the company be wound up voluntarily;
- (3) 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 up.

180 A voluntary winding up shall be deemed to commence at the time of the passing of the resolution authorizing the winding up.

Commencement of voluntary winding up.

181 When a company is wound up voluntarily, 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:

Effect of voluntary winding up on status of company.

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.

182 (1) When a company has resolved by special or extraordinary resolution to wind up voluntarily, it shall give notice of the resolution by advertisement in the "Government Gazette."

Notice of resolution to wind up voluntarily.

(2) If a company makes default in complying with the requirements of this section, it shall be guilty of an offence, and be liable on conviction to a fine not exceeding fifty rupees for every day during which the default continues ; and every director, manager, and secretary of the company, who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty.

Consequences
of voluntary
winding up.

183 The following consequences shall ensue on the voluntary winding up of a company :

- (i.) The property of the company shall be applied in satisfaction of its liabilities *pri passu*, and, subject thereto, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company ;
- (ii.) 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 ;
- (iii.) 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 ;
- (iv.) The liquidator may, without the sanction of the court, exercise all powers by this Ordinance given to the liquidator in a winding up by the court ;
- (v.) The liquidator may exercise the powers of the court under this Ordinance of settling a list of contributories, and of making calls, and shall pay the debts of the company, and adjust the rights of the contributories among themselves ;
- (vi.) The list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories ;
- (vii.) When several liquidators are appointed, every power hereby given 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 ;
- (viii.) If from any cause whatever there is no liquidator acting, the court may, on the application of a contributory, appoint a liquidator ;
- (ix.) The court may, on cause shown, remove a liquidator, and appoint another liquidator.

Notice by
liquidator of his
appointment.

184 (1) The liquidator in a voluntary winding up shall, within twenty-one days after his appointment, file with the Registrar of Companies a notice of his appointment in the form prescribed.

(2) If the liquidator fails to comply with the requirements of this section, he shall be guilty of an offence, and on conviction be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Rights of
creditors in a
voluntary
winding up.

185 (1) Every liquidator appointed by a company in a voluntary winding up shall, within seven days from his appointment, send notice by post to all persons who appear to him to be creditors of the company that a meeting of the creditors of the company will be held on a date, not being less than fourteen nor more than twenty-one days after his appointment, and at a place and hour, to be specified in the notice, and shall also advertise notice of the meeting once in the " Government 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 was situate.

(2) At the meeting to be held in pursuance of the foregoing provisions of this section, the creditors shall determine whether an application shall be made to the court for the appointment of any person as liquidator in the place of or jointly with the liquidator appointed by the company, or for the appointment of a committee of inspection, and, if the creditors so resolve, an application may be made accordingly to the court at any time, not later than fourteen days after the date of the meeting, by any creditor appointed for the purpose at the meeting: Provided that the court may, by order, at any time, extend the time for making an application under this sub-section for such period as the court thinks proper.

(3) On any such application the court may make an order either for the removal of the liquidator appointed by the company and for the appointment of some other person as liquidator or for the appointment of some other person to act as liquidator jointly with the liquidator appointed by the company, or for the appointment of a committee of inspection either together with or without any such appointment of a liquidator or such other order as, having regard to the interests of the creditors and contributories of the company, may seem just.

(4) No appeal shall lie from any order of the court upon an application under this section.

(5) The court shall make such order as to the costs of the application as it may think fit, and if it is of opinion that, having regard to the interests of the creditors in the liquidation, there were reasonable grounds for the application, may order the costs of the application to be paid out of the assets of the company, notwithstanding that the application is dismissed or otherwise disposed of adversely to the applicant.

186 (1) If a vacancy occurs by death, resignation, or otherwise in the office of liquidator appointed by the company in a voluntary winding up, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

Power to fill vacancy in office of liquidator.

(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 prescribed by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

187 (1) A company about to be, or in course of being, wound up voluntarily may, by extraordinary resolution, delegate to its creditors, or to any committee of them, the power of appointing liquidators or any of them, and of supplying vacancies among the liquidators, or enter into any arrangement with respect to the powers to be exercised by the liquidators and the manner in which they are to be exercised.

Delegation of authority to appoint liquidators.

(2) Any act done by creditors in pursuance of any such delegated power shall have the same effect as if it had been done by the company.

188 (1) Any arrangement entered into between a company about to be, or in the course of being, wound up voluntarily and its creditors shall, subject to any 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.

Arrangement when binding on 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.

189 (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 (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.

Power of liquidator to accept shares, &c., as consideration for sale of property of 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 at either of the meetings held for passing and confirming the same expresses his dissent therefrom in writing addressed to the liquidator, and left at the

registered office of the company within seven days after the confirmation 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 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 Companies Clauses Consolidation Act, 1845, of the Imperial Parliament, with respect to the settlement of disputes by arbitration, shall be incorporated with this Ordinance; and in the construction of those provisions this Ordinance shall be deemed to be the special Ordinance, and "the company" shall mean the transferor company, and the words "the Board of Trade" shall be read as meaning the Governor in Executive Council, and any appointment by the said incorporated provisions directed to be made under the hand of the secretary, or any two of the directors, may be made under the hand of the liquidator, or, if there is more than one liquidator, then of any two or more of the liquidators.

Power to apply to court.

190 (1) Where a company is being wound up voluntarily, the liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up, 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 the court thinks fit, or may make such other order on the application as the court thinks just.

Power of liquidator to call general meeting.

191 (1) Where a company is being wound up voluntarily, the liquidator may 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 purposes he may think fit.

(2) 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.

Final meeting and dissolution.

192 (1) In the case of every voluntary winding up, 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 shall send a copy of the same to the Official Receiver, who may cause the same to be audited.

(2) For the purpose of such audit the liquidator shall furnish the Official Receiver with such vouchers and information as he may require, and the Official Receiver may at any time require the production of, and inspect, any books or accounts kept by the liquidator.

(3) Upon such accounts having been audited, or if the Official Receiver does not consider audit to be necessary, upon his making an intimation to that effect in writing to the liquidator, the liquidator shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

(4) The meeting shall be called by advertisement in the "Government Gazette" specifying the time, place, and object thereof, and published one month at least before the meeting.

(5) Within one week after the meeting the liquidator shall make a return to the Registrar of Companies of the holding of the meeting, and of its date, and in default of so doing shall be guilty of an offence, and on conviction be liable to a fine not exceeding fifty rupees for every day during which the default continues.

(6) The Registrar on receiving the return shall forthwith register it, and on the expiration of three months from the registration of the return 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.

(7) 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 a certified copy of the order, and if that person fails so to do, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

193 All costs, charges, and expenses properly incurred in the voluntary winding up of a company, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

194 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, if the court is of opinion, in the case of an application by a creditor that the rights of the creditor or, in the case of an application by a contributory, that the rights of the contributories will be prejudiced by a voluntary winding up.

195 Where a company is being wound up voluntarily, and an order is made for winding up by the court, the court may if it thinks fit by the same or any subsequent order provide for the adoption of all or any of the proceedings in the voluntary winding up.

Winding up subject to supervision of Court.

196 When a company has by special or extraordinary resolution resolved to wind up voluntarily, 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.

197 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, be deemed to be a petition for winding up by the court.

198 The court may, in deciding between a winding up by the court and a winding up subject to supervision, in the appointment of liquidators, and in all other matters relating to the winding up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

199 (1) Where an order is made for a winding up subject to supervision, the court may by the same or any subsequent order appoint any 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 appointed by the company.

(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.

200 (1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed 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.

Costs of voluntary liquidation.

Saving for rights of creditors and contributories.

Power of court to adopt proceedings of voluntary winding up.

Power to order winding up subject to supervision.

Effect of petition for winding up subject to supervision.

Court may have regard to wishes of creditors and contributories.

Power for court to appoint or remove liquidators.

Effect of supervision order.

(2) A winding up subject to the supervision of the court is not a winding up by the court for the purpose of the following provisions of this Ordinance, namely, those contained in sections 146, 147, 148, except sub-section (9), 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 172, and 174, but, subject as aforesaid, an order for a winding up subject to supervision shall for all purposes, including the staying of actions and other proceedings, the making and enforcement of calls, and the exercise of all other powers, be deemed to be an order for winding up by the court.

Supplemental Provisions.

Avoidance of transfers, &c., after commencement of winding up.

201 (1) In the case of voluntary winding up, every transfer of shares, except transfers made to or with the sanction of the liquidator, and every alteration in the status of the members of the company made after the commencement of the winding up, shall be void.

(2) In the case of a winding up by or subject to the supervision of the court, every disposition of the property (including things in action) of the company, and every transfer of shares, or alteration in the status of its members, made after the commencement of the winding up, shall, unless the court otherwise orders, be void.

Debts of all descriptions to be proved.

202 In every winding up (subject in the case of insolvent companies to the application in accordance with the provisions of this Ordinance of the law of insolvency or 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.

Application of bankruptcy rules in winding up of insolvent companies.

203 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 as are in force for the time being under the law of insolvency or bankruptcy, as the case may be, with respect to the estates of persons adjudged insolvent or 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.

Preferential payments.

204 (1) In a winding up there shall be paid in priority to all other debts—

(a) All rates, charges, taxes, assessments, or impositions, whether imposed or made by the Government of the Colony, or by any public authority under the provisions of any Ordinance, and having become due and payable within twelve months next before the date hereinafter mentioned;

(b) All wages or salary of any clerk or servant in respect of services rendered to the company during four months before the said date, not exceeding five hundred rupees; and

(c) All wages of any workman or labourer not exceeding two hundred and fifty rupees, whether payable for time or for piecework, in respect of services rendered to the company during two months before the said date: Provided that where any labourer 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 of service up to the said date.

(2) 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, 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.

(3) 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.

(4) The date hereinbefore in this section referred to is—

(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 winding up.

205 (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 or in any insolvency proceedings against him 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.

Fraudulent preference.

(2) For the purposes of this section the presentation of a petition for winding up in the case of a winding up by or subject to the supervision of the court, and a resolution for winding up in the case of a voluntary winding up, shall be deemed to correspond with the act of insolvency or bankruptcy 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.

206 Where any company is being wound up by or subject to the supervision of 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.

Avoidance of certain attachments, executions, &c., in case of company.

207 Where a company is being wound up, a floating charge on the undertaking or property of the company created within three months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per centum per annum.

Effect of floating charge.

208 (1) The liquidator may, with the sanction following (that is to say):

(a) In the case of a winding up by the court with the sanction either of the court or of the committee of inspection, and

(b) In the case of a voluntary winding up, with the sanction of an extraordinary resolution of the company,

do the following things or any of them:

(i.) Pay any classes of creditors in full;

(ii.) 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;

(iii.) Compromise all calls and liabilities to calls, debts, and 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 contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as 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.

General scheme of liquidation may be sanctioned.

(2) In the case of a winding up by the court, the exercise by the liquidator of the powers of 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.

Power of court to assess damages against delinquent directors, &c.

209 (1) Where 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 official receiver, or 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) This section shall apply, notwithstanding that the offence is one for which the offender may be criminally responsible.

(3) Where in the case of a winding up an order for payment of money is made under this section, the order shall be deemed to be a final decree within the meaning of the provisions of the law relating to acts of insolvency or of bankruptcy for the time being in force.

Penalty for falsification of books.

210 If any director, officer, or contributory of any company being wound up destroys, mutilates, alters, or falsifies or fraudulently secretes 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 an offence, and on conviction be liable to imprisonment of either description for any term not exceeding two years.

Prosecution of delinquent directors, &c.

211 (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, officer, or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, 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, and may order the costs and expenses to be paid out of the assets of the company.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present director, manager, officer, or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the liquidator, with the previous sanction of the court, may prosecute the offender, and all expenses properly incurred by him in the prosecution shall be payable out of the assets of the company in priority to all other liabilities.

Penalty on perjury.

212 If any person, on examination on oath authorized under this Ordinance, or in any affidavit or deposition in or about the winding up of any company or otherwise in or about any matter arising under this Ordinance, wilfully and corruptly gives false evidence, he shall be guilty of the offence of giving false evidence.

Meetings to ascertain wishes of creditors or contributories.

213 (1) Where by this Ordinance the court is authorized, in relation to winding up, to have regard to the wishes of creditors or contributories, as proved to it by any sufficient evidence, the court 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 the articles.

214 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.

Books of company to be evidence.

215 After an order for a winding up by or subject to the supervision of the court, the court may make such order for inspection by creditors and contributories of the company of its books and papers as the court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

Inspection of books.

216 (1) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidators may be disposed of as follows (that is to say) :

Disposal of books and papers of company.

(a) In the case of a winding up by or subject to the supervision of the court, in such way as the court directs ;

(b) In the case of a voluntary winding up, in such way as the company by extraordinary resolution directs.

(2) After five 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.

217 (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.

Power of court to declare dissolution of company void.

(2) It shall be the duty of the person on whose application the order was made, within seven days after the making of the order, to file with the Registrar of Companies a certified copy of the order, and if that person fails so to do, he shall be guilty of an offence, and on conviction be liable to a fine not exceeding fifty rupees for every day during which the default continues.

218 (1) Where a company is being wound up, if 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, send to the Registrar of Companies a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

Information as to pending liquidations.

(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 ; but any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court, and shall be punishable accordingly on the application of the liquidator or of the official receiver.

(3) If a liquidator fails to comply with the requirements of this section, he shall be guilty of an offence, and on conviction be liable to a fine not exceeding five hundred rupees for each day during which the default continues.

(4) If it appears from any such statement 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 the date of their receipt, the liquidator shall forthwith pay the same to the Companies Liquidation Account, referred to in section 221 of this Ordinance, 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.

(5) For the purpose of ascertaining and getting in any money payable into the bank in pursuance of this section, the like powers may be exercised, and by the like authority, as are exercisable under the provisions of the law for the time being in force relating to insolvency or bankruptcy for the purpose of ascertaining and getting in the sums, funds, and dividends referred to in such provisions.

(6) Any person claiming to be entitled to any money paid into the bank in pursuance of this section may apply to the official receiver for payment of the same, and the official receiver may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person of the sum due.

(7) Any person dissatisfied with the decision of the official receiver in respect of any claim made in pursuance of this section may appeal to the court.

Judicial notice
of signature of
officers.

219 In all proceedings under this part of this Ordinance, all courts, judges, and persons judicially acting, and all officers, judicial or ministerial, of any court, or employed in enforcing the process of any court, shall take judicial notice of the signature of any officer of the court, and also of the official seal or stamp of the several offices of the court, appended to or impressed on any document made, issued, or signed under the provisions of this part of this Ordinance, or any official copy thereof.

Affidavits.

220 (1) Any affidavit required to be sworn under the provisions or for the purposes of this part of this Ordinance may be sworn in the Colony, or elsewhere within the dominions of His Majesty, before any court, judge, or person lawfully authorized to take and receive affidavits, or before any of His Majesty's consuls or vice-consuls in any place outside His Majesty's dominions.

(2) All courts, judges, justices, commissioners, and persons acting judicially shall take judicial notice of the seal or stamp or signature (as the case may be) of any such court, judge, person, consul, or vice-consul attached, appended, or subscribed to any such affidavit, or to any other document to be used for the purposes of this part of this Ordinance.

Companies
Liquidation
Account
defined.

221 (1) An account, called the Companies Liquidation Account, shall be kept by the official receiver at such bank as the Colonial Treasurer may direct, and all moneys received by the official receiver in respect of proceedings under this Ordinance in connection with the winding up of companies shall be paid to that account.

(2) All payments out of money standing to the credit of the official receiver in the Companies Liquidation Account shall be made by the said bank in the prescribed manner.

Separate
accounts of
particular
estates.

222 (1) An account shall be kept by the official receiver of the receipts and payments in the winding up of each company, and, when the cash balance standing to the credit of the account of any company is in excess of the amount which, in the opinion of the committee of inspection, is required for the time being to answer demands in respect of that company's estate, the official receiver shall, on the request of the committee, invest the amount not so required in such securities as the court may direct, to be placed to the credit of the said account for the benefit of the company.

(2) When any part of the money so invested is, in the opinion of the committee of inspection, required to answer any demands in respect of the estate of the company, the official receiver shall, on the request of the committee, raise such sum as may be required by the sale of such part of the said securities as may be necessary.

(3) The dividends on investments under this section shall be paid to the credit of the company.

Officers and
remunerations.

223 (1) The Governor may appoint such additional officers as may be required for the execution of this part of this Ordinance, and may remove any person so appointed.

(2) The Governor shall direct whether any and what remuneration is to be allowed to any officer or person performing any duties under this part of this Ordinance in relation to the winding up of companies, and may vary, increase, or diminish that remuneration as he thinks fit.

Rules and Fees.

224 (1) The Chief Justice may, with the concurrence of the Governor in Executive Council, make general rules for carrying into effect the objects of this Ordinance so far as relates to the winding up of companies.

Rules and fees for winding up.

(2) All general rules made under this section shall be laid before the Legislative Council within three weeks after they are made if the Council is then sitting, and if the Council is not sitting, within three weeks after the beginning of the next session of the Council, and shall be judicially noticed, and shall have effect as if enacted by this Ordinance.

(3) There shall be paid in respect of proceedings under this Ordinance in relation to the winding up of companies such fees as the Chief Justice may, with the sanction of the Governor in Executive Council, direct, and the Governor in Executive Council may direct by whom and in what manner the same are to be collected and accounted for, and to what account they are to be paid.

(4) The authority having power to make rules or give directions under this section may, by any such rules or directions, repeal, alter, or amend any rules made and directions which are in force at the commencement of this Ordinance.

225 (1) Subject to the provisions of this Ordinance with respect to rules and fees in relation to the winding up of companies, the Chief Justice, with the concurrence of a Puisne Judge, may make rules of procedure for the purposes of this Ordinance, including rules as to costs and fees.

Powers to make rules of procedure.

(2) The authority having power to make rules under this section may by any such rules repeal, alter, or amend any rules which are in force at the commencement of this Ordinance.

Removal of Defunct Companies from Register.

226 (1) Where the Registrar of Companies has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.

Registrar may strike defunct company off register.

(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 "Government 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 "Government 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 after notice by the Registrar demanding the returns has been sent by post to the company, or to the liquidator at his last known place of business, the Registrar may publish in the "Government Gazette" and send to the company a like notice as is provided in the last preceding sub-section.

(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 "Government Gazette," and on the publication in the "Government Gazette" of this notice the company shall be dissolved: Provided that 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.

(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 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 thereupon 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 letter or notice under this section 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 of Companies, may be sent to each of the persons who subscribed the memorandum addressed to him at the address mentioned in the memorandum.

PART V.

REGISTRATION OFFICE AND FEES.

Registration office.

227 (1) For the purposes of the registration of companies under this Ordinance, the Registrar-General shall be *ex officio* the Registrar of Companies under this Ordinance, and the office of the Registrar-General shall be the office of registration of companies.

(2) The Governor may appoint an Assistant Registrar of Companies, who shall perform such duties under this Act as the Governor may from time to time direct.

(3) The Governor may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies.

(4) Any person may inspect the documents kept by the Registrar on payment of such fees as may be appointed by the Governor in Executive Council not exceeding one rupee for each document inspected ; and any person may require a certificate of the incorporation of any company, 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 the Governor in Executive Council may appoint, not exceeding two rupees and fifty cents for a certificate of incorporation, and not exceeding fifty cents for each folio of one hundred words or part thereof of a certified copy or extract.

(5) A copy of or extract from any document kept and registered at the office for the registration of companies certified to be a true copy under the hand of the Registrar or Assistant Registrar (whose official position it shall not be necessary to prove) shall in all legal proceedings be admissible in evidence as of equal validity with the original document.

Fees.

228 (1) There shall be paid to the Registrar in respect of the several matters mentioned in table B in the first schedule to this Ordinance the several fees therein specified; or such smaller fees as the Governor in Executive Council may from time to time direct.

(2) All fees paid to the Registrar in pursuance of this Ordinance shall be paid into the general revenue.

PART VI.

APPLICATION OF ORDINANCE TO COMPANIES FORMED AND REGISTERED UNDER FORMER COMPANIES ORDINANCES.

Application of Ordinance to companies formed under former Companies Ordinances.

229 In the application of this Ordinance to existing companies, it shall apply in the same manner 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 Ordinance as a company limited by shares ; in the case of a company limited by guarantee, as if the company had been

formed and registered under this Ordinance as a company limited by guarantee ; and in the case of a company other than a limited company, as if the company had been formed and registered under this Ordinance 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 Joint Stock Companies Ordinances, or any of them repealed by this Ordinance.

PART VII.

WINDING UP OF UNREGISTERED COMPANIES.

230 For the purposes of this part of this Ordinance the expression "unregistered company" shall not include a company registered under the Joint Stock Companies Ordinances, or under this Ordinance, but, save as aforesaid, shall include any partnership, association, or company consisting of more than seven members.

Meaning of unregistered company.

231 (1) Subject to the provisions of this part of this Ordinance, any unregistered company may be wound up under this Ordinance, and all the provisions of this Ordinance with respect to winding up shall apply to an unregistered company, with the following exceptions and additions :

Winding up of unregistered companies.

(i.) The District Court of the place where the principal place of business of an unregistered company is situated shall be the court having jurisdiction to wind up the company.

(ii.) No unregistered company shall be wound up under this Ordinance voluntarily or subject to supervision ;

(iii.) The circumstances in which an unregistered company may be wound up are as follows (that is to say) :

(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 ;

(b) If the company is unable to pay its debts ;

(c) 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 Ordinance, 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 five hundred rupees then due, has served on the company, by leaving at its principal place of business, 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 favour of a creditor against the company, or any member thereof as such, or any person authorized to be sued as nominal defendant on behalf of the company, is returned unsatisfied;

(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 Ordinance 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 Ordinance, 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 Ordinance.

Contributories
in winding up
of unregistered
company.

232 (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 Ordinance with respect to the personal representatives, heirs, and devisees of deceased contributories, to the trustees of bankrupt or insolvent contributories, and to the liabilities of husbands and wives respectively shall apply.

Power of court
to stay or
restrain
proceedings.

233 The provisions of this Ordinance with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order 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.

Actions stayed
on winding up
order.

234 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.

Directions as
to property in
certain cases.

235 If an unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the court may by the winding-up order, or by any subsequent order, direct that all or any part of the property, real and personal (including things in action), belonging to the company, or to trustees on its behalf, is to vest in the liquidator by his official name, and thereupon the property or the part thereof specified in the order 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 relating to that property, or necessary to be brought or defended for the purposes of effectually winding up the company and recovering its property.

Provisions of
part of
Ordinance
cumulative.

236 The provisions of this part of this Ordinance with respect to unregistered companies shall be in addition to and not in restriction of any provisions hereinbefore in this Ordinance 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 Ordinance; but an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Ordinance, and then only to the extent provided by this part of this Ordinance.

PART VIII.

COMPANIES ESTABLISHED OUTSIDE THE COLONY.

237 (1) Every company incorporated outside the Colony which establishes a place of business within the Colony shall within three months from the establishment of the place of business or within such further time as the Registrar may allow; file with the Registrar of Companies—

Requirements as to companies established outside the Colony.

- (a) A certified copy of the charter, statutes, 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;
- (b) A list containing the names, addresses, occupations and nationalities of the persons who are the directors, or occupy the position of directors, of the company, or in accordance with whose directions the directors of a company are accustomed to act, any former names that may have been borne by any such persons, and if the nationalities of any such persons are not their nationalities of origin, their nationalities of origin;
- (c) The names and addresses of some one or more persons resident in the Colony authorized to accept on behalf of the company service of process and any notices required to be served on the company;

and, in the event of any alteration being made in any such instrument, or as regards any of the particulars regarding directors or persons occupying the position of directors set forth in paragraph (b), or in the names or addresses of the persons referred to in paragraph (c), the company shall within three months, or such extended period as the Registrar may on application allow, file with the Registrar a notice of the alteration.

(2) Any process or notice required to be served on the company shall be sufficiently served if addressed to any person whose name has been so filed as aforesaid and left at or sent by post to the address which has been so filed.

(3) Every company to which this section applies, and which uses the word "limited" as part of its name, shall—

- (a) In every prospectus inviting subscriptions for its shares or debentures in the Colony state the country in which the company is incorporated; and
- (b) Conspicuously exhibit on every place where it carries on business in the Colony the name of the company and the country in which the company is incorporated in letters easily legible in English characters; and
- (c) Have the name of the company and of the country in which the company is incorporated mentioned in legible English characters in all bill heads and letter paper, and in all notices, advertisements, and other official publications of the company.

(4) If any company to which this section applies fails to comply with any of the requirements of this section, the company, and every officer or agent of the company, shall be guilty of an offence, and on conviction be liable to a fine not exceeding five hundred rupees, or, in the case of a continuing offence, fifty rupees for every day during which the default continues:

Provided that the Registrar may, if he thinks fit, instead of instituting proceedings against such company or party in default, accept from such company or party such sum of money as the Registrar may think proper in composition of the offence committed by such company or party:

Provided further that when the Registrar has accepted any such sum of money as aforesaid, proceedings under this section shall not be taken, or, if already taken, shall not be continued, in respect of such offence against the company or party so compounding.

(5) For the purposes of this section—

The expression "certified" means certified in the prescribed manner to be a true copy or a correct translation ;
The expression "place of business" includes a share transfer or share registration office ;
The expression "director" includes any person occupying the position of director by whatever name called ; and
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.

Registration fees.

238 There shall be paid to the Registrar for registering any document required by the last preceding section to be filed with him a fee of five rupees or such smaller fee as may be prescribed.

Power of companies incorporated outside Colony to hold land on complying with section 237.

239 A company incorporated outside the Colony shall not, unless it has filed with the Registrar the documents and particulars specified in paragraphs (a), (b), and (c) of subsection (1) of section 237 of this Ordinance, have power to hold lands in the Colony.

PART IX.

SUPPLEMENTAL.

Legal Proceedings, Offences, &c.

Prosecution of offences.

240 All offences under this Ordinance made punishable by any fine shall be triable summarily by a Police Magistrate.

Applications of fines.

241 The court imposing any fine under this Ordinance 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 fine is recovered, and subject to any such direction all fines under this Ordinance shall, notwithstanding anything in any other Ordinance, be paid into the general revenue.

Costs in actions by certain limited companies.

242 Where a limited company is plaintiff in any action or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

Power of court to grant relief in certain cases.

243 If in any proceeding against a director, or person occupying the position of director, of a company for negligence or breach of trust it appears to the court hearing the case that the director or person is or may be liable in respect of the negligence or breach of trust, but has acted honestly and reasonably, and ought fairly to be excused for the negligence or breach of trust, that court may relieve him, either wholly or partly, from his liability on such terms as the court may think proper.

Penalty for false statement.

244 If any person in any return, report, certificate, balance sheet, or other document, required by or for the purposes of any of the provisions of this Ordinance specified in the fifth schedule hereto, wilfully makes a statement false in any material particular knowing it to be false, he shall be guilty of an offence, and shall be liable on conviction on indictment to imprisonment of either description for a term not exceeding two years, and on summary conviction to imprisonment of either description 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 the fine imposed on summary conviction shall not exceed one thousand rupees.

Penalty for improper use of word "limited."

245 If any person or persons trade or carry on business under any name or title of which "limited" is the last word, that person or those persons shall, unless duly incorporated with limited liability, be guilty of an offence, and on conviction be liable to a fine not exceeding fifty rupees for every day upon which that name or title has been used.

Repeal of Ordinances and Transitional Provisions.

246 (1) The Ordinances mentioned in the sixth schedule to this Ordinance are hereby repealed to the extent specified in the third column of that schedule.

Repeal of Ordinances and savings.

Provided that the repeal shall not affect—

- (a) The incorporation of any company registered under any enactment hereby repealed ; nor
- (b) Part C of the schedule annexed to "The Joint Stock Companies Ordinance, 1861," or any part thereof, so far as the same applies to any company existing at the commencement of this Ordinance ; nor
- (c) Table B in the first schedule annexed to "The Joint Stock Companies Banking Ordinance, 1897," or any part thereof so far as the same applies to any company existing at the commencement of this Ordinance.

(2) The mention of particular matters in this section or in any other section of this Ordinance shall not prejudice the general application of section 5 of "The Interpretation Ordinance, 1901," with regard to the effect of repeals.

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

Saving of pending proceedings for winding up.

248 Every conveyance, mortgage, or other deed made before the commencement of this Ordinance in pursuance of any enactment hereby repealed shall be of the same force as if this Ordinance had not passed, and for the purposes of that deed the repealed enactment shall be deemed to remain in full force.

Saving of deeds.

249 Existing registers of companies shall respectively be deemed part of the registers of companies to be kept under this Ordinance.

Former registers continued.

250 Until revoked and except as varied under the powers of this Ordinance, the general rules and orders and scales of fees under the Joint Stock Companies Ordinances in force at the commencement of this Ordinance and the rules of court in force at the commencement of this Ordinance with respect to the procedure for winding up companies, and the practice and procedure for winding up companies in force at the commencement of this Ordinance, shall, so far as they are not inconsistent with this Ordinance, continue in force.

Saving for existing rules of procedure, &c.

251 Where any enactment repealed by this Ordinance is mentioned or referred to in any document, that document shall be read as if the corresponding provision (if any) of this Ordinance were therein mentioned or referred to and substituted for the repealed enactment.

Substitution of provisions of this Ordinance for provisions of repealed Ordinances.

FIRST SCHEDULE.

Table A.—Regulations for Management of a Company limited by Shares.

(Sections 12 and 13.)

Preliminary.

1. In these regulations, unless the context otherwise requires, expressions defined in "The Companies Ordinance, No. of 1924," 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 ; and words importing the singular shall include the plural and *vice versa*, and words importing the masculine gender shall include females, and words importing persons shall include bodies corporate.

Business.

2. The directors shall have regard to the restrictions on the commencement of business imposed by section 91 of "The Companies Ordinance, No. of 1924," if and so far as those restrictions are binding upon the company.

Shares.

3. Subject to the provisions, if any, in that behalf or the memorandum of association of the company, and without prejudice to any special rights previously conferred on the holders of existing shares in the company, any share in the company 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.

4. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may 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.

5. No share shall be offered to the public for subscription except upon the terms that the amount payable on application shall be at least five per cent. of the nominal amount of the share; and the directors shall, as regards any allotment of shares, duly comply with such of the provisions of sections 89 and 92 of "The Companies Ordinance, No. of 1924," as may be applicable thereto.

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 common 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 fifty cents, 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 be employed in the purchase of, or in loans upon, the security of the company's shares.

Lien.

9. 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 clause. The company's lien, if any, on a share shall extend to all dividends payable thereon.

10. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien, but no sale shall be made unless 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 the person entitled by reason of his death, insolvency, or bankruptcy, to the share.

11. The proceeds of the sale shall be 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. The purchaser shall be registered as the holder of the shares, 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.

Calls on Shares.

12. 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.

13. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

14. 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 five 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.

15. The provisions of these regulations 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.

16. 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.

17. 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 would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, six per centum) as may be agreed upon between the member paying the sum in advance and the directors.

Transfer and Transmission of Shares.

18. The instrument of transfer of any share in the company shall be executed both by 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.

19. Shares in the company 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 Rs. —, 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, his executors, administrators, and assigns, subject to the several conditions on which I held the same at the time of the execution thereof; 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 —, 19 —.

Witness to the signatures of, &c.

20. 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 recognize any instrument of transfer, unless—

(a) A fee not exceeding one rupee 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.

21. The executors, administrators or heirs of a deceased sole holder of a share shall be the only persons recognized 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 executors, administrators, or heirs of the deceased survivor shall be the only persons recognized by the company as having any title to the share.

22. Any person becoming entitled to a share in consequence of the death, insolvency, or bankruptcy of a member shall, upon such evidence being produced as may from time to time be 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, insolvent, 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, insolvent, or bankrupt person before the death, insolvency, or bankruptcy.

23. A person becoming entitled to a share by reason of the death, insolvency, 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.

24. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

25. 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.

26. 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.

27. 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.

28. 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.

29. An affidavit that the deponent is a director of the company, and that a share in the company has been duly forfeited on a date stated in the affidavit shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share, and that affidavit, and the receipt of the company for the consideration, if any, given for the share on the sale or disposition thereof shall constitute a good title to the share, and the person to whom the share is sold or disposed of shall 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.

30. 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.

31. The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock, and may with the like sanction re-convert any stock into paid-up shares of any denomination.

32. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as, and subject to which, the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

33. 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.

34. Such of the regulations of the company (other than those relating to share warrants) as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder."

Share Warrants.

35. The company may issue share warrants, and accordingly the directors may in their discretion, with respect to any share which is fully paid up, on application in writing signed by the person registered as holder of the share, and authenticated by such evidence, if any, as the directors may from time to time require as to the identity of the person signing the request, and on receiving the certificate, if any, of the share, and the amount of the stamp duty on the warrant and such fee as the directors may from time to time require, issue under the company's seal a warrant, duly stamped, 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 dividends, or other moneys, on the shares included in the warrant.

36. A share warrant shall entitle the bearer to the shares included in it, and the shares shall be transferred by the delivery of the share warrant, and the provisions of the regulations of the company with respect to transfer and transmission of shares shall not apply thereto.

37. The bearer of a share warrant shall, on surrender of the warrant to the company for cancellation, and on payment of such sum as the directors may from time to time prescribe, be entitled to have his name entered as a member in the register of members in respect of the shares included in the warrant.

38. The bearer of a share warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited, the depositor shall have the same right of signing a requisition for calling a meeting of the company, and of attending and voting and exercising the other privileges of a member at any meeting held after the expiration of two clear days from the time of deposit, as if his name were inserted in the register of members as the holder of the shares included in the deposited warrant. Not more than one person shall be recognized as depositor of the share warrant. The company shall, on two days' written notice, return the deposited share warrant to the depositor.

39. Subject as herein otherwise expressly provided, no person shall, as bearer of a share warrant, sign a requisition for calling a meeting of the company, or attend, or vote, or exercise any other privilege of a member at a meeting of the company, or be entitled to receive any notices from the company; but the bearer of a share warrant shall be entitled in all other respects to the same privileges and advantages as if he were named in the register of members as the holder of the shares included in the warrant, and he shall be a member of the company.

40. The directors may from time to time make rules as to the terms on which (if they shall think fit) a new share warrant or coupon may be issued by way of renewal in case of defacement, loss, or destruction.

Alteration of Capital.

41. The directors may, with the sanction of an extraordinary resolution of the company, increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

42. Subject to any direction to the contrary that may be given by the resolution sanctioning the increase of share capital, 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 the same 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.

43. 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.

44. The company may, by special resolution—

- (a) Consolidate and divide its share capital into shares of larger amount than its existing shares ;
- (b) By subdivision of its existing shares, or any of them, divide the whole, or any part, of its share capital into shares of smaller amount than is fixed by the memorandum of association, subject, nevertheless, to the provisions of paragraph (d) of sub-section (1) of section 43 of "The Companies Ordinance, No. of 1924" ;
- (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 ;
- (d) Reduce its share capital in any manner and with, and subject to, any incident authorized, and consent required, by law.

General Meetings.

45. The statutory general meeting of the company shall be held within the period required by section 67 of "The Companies Ordinance, No. of 1924."

46. A general meeting shall be held once in every 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 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.

47. The above-mentioned general meetings shall be called ordinary meetings ; all other general meetings shall be called extraordinary.

48. 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 68 of "The Companies Ordinance, No. of 1924." If at any time there are not within the Colony 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.

Proceedings at General Meeting.

49. 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 the non-receipt of the notice by any member shall not invalidate the proceedings at any general meeting.

50. 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.

51. 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.

52. 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.

53. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

54. 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.

55. 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.

56. 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, 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.

57. 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.

58. 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.

59. 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.

60. On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.

61. 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.

62. 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 manager, and any such manager may, on a poll, vote by proxy.

63. 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.

64. On a poll votes may be given either personally or by proxy.

65. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorized in writing, or, if the appointor is a corporation, either under the common seal, or under the hand of an officer or attorney so authorized. No person shall act as a proxy unless either he is entitled on his own behalf to be present and vote at the meeting at which he acts as proxy, or he has been appointed to act at that meeting as proxy for a corporation.

66. 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 at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

67. An instrument appointing a proxy may be in the following form, or in any other form which the directors shall approve :—

— Company, Limited.

I, —, 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 —, 19—.

Directors.

68. 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.

69. The remuneration of the directors shall from time to time be determined by the company in general meeting.

70. The qualification of a director shall be the holding of at least one share in the company, and it shall be his duty to comply with the provisions of section 75 of "The Companies Ordinance, No. of 1924."

Powers and Duties of Directors.

71. 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 Companies Ordinance, No. of 1924," or any statutory modification thereof for the time being in force, 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 said Ordinance, 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.

72. 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 of 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.

73. 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.

74. The directors shall duly comply with the provisions of "The Companies Ordinance, No. of 1924," or any statutory modification thereof for the time being in force, and in particular with the provisions in regard to the registration of the particulars of mortgages and charges affecting the property of the company, or created by it, and to keeping a register of the directors, and to sending to the Registrar of Companies an annual list of members, and a summary of particulars relating thereto, and notice of any consolidation or increase of share capital, or conversion of shares into stock, and copies of special resolutions, and a copy of the register of directors and notifications of any changes therein.

75. 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.

The Seal.

76. 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 at least two directors and of the secretary or such other person as the directors may appoint for the purpose; and those two directors and secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Disqualifications of Directors.

77. The office of director shall be vacated, if the director—

- (a) Ceases to be a director by virtue of section 75 of "The Companies Ordinance, No. of 1924"; or
- (b) Holds any other office of profit under the company except that of managing director or manager; or
- (c) Becomes insolvent or bankrupt; or
- (d) Is found lunatic or becomes of unsound mind; or
- (e) Is concerned or participates in the profits of any contract with the company.

Provided, however, that no director shall vacate his office by reason of his being a member of any company which has entered into contracts with, or done any work for, the company of which he is director; but a director shall not vote in respect of any such contract or work, and if he does so vote, his vote shall not be counted.

Rotation of Directors.

78. At the first ordinary meeting of the company the whole of the directors shall retire from office, and at the ordinary 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 to one-third, shall retire from office.

79. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

80. A retiring director shall be eligible for re-election.

81. 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.

82. If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week at the same time and place, and if at the adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall be deemed to have been re-elected at the adjourned meeting.

83. 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.

84. 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.

85. 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.

86. 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.

87. 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.

88. 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.

89. 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.

90. 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.

91. 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.

92. A committee may elect a chairman of their 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.

93. A committee may meet and adjourn as they think 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.

94. 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, 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.

95. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

96. 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.

97. No dividend shall be paid otherwise than out of profits.

98. 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.

99. 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 equalizing 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.

100. If several persons are registered as joint holders of any share, any one of them may give effectual receipts for any dividend payable on the share.

101. Notice of any dividend that may have been declared shall be given in manner hereinafter mentioned to the persons entitled to share therein.

102. No dividend shall bear interest against the company.

Accounts.

103. The directors shall cause true accounts to be kept—

Of the sums of money received and expended by the company and the matter in respect of which such receipt and expenditure takes place; and
Of the assets and liabilities of the company.

104. The books of accounts 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.

105. 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 any enactment or authorized by the directors or by the company in general meeting.

106. Once at least in every year the directors shall lay before the company in general meeting a profit and loss account for the period since the preceding account or (in the case of the first account) since the incorporation of the company made up to a date not more than six months before such meeting.

107. A balance sheet shall be made out in every year and laid before the company in general meeting made up to a date not more than six months before such meeting. The balance sheet shall be accompanied by a report of the directors as to the state of the company's affairs, and the amount which they recommend to be paid by way of dividend, and the amount, if any, which they propose to carry to a reserve fund.

108. A copy of the balance sheet and report shall, seven days previously to the meeting, be sent to the persons entitled to receive notices of general meetings in the manner in which notices are to be given hereunder.

Audit.

109. Auditors shall be appointed and their duties regulated in accordance with sections 115 and 116 of "The Companies Ordinance, No. of 1924," or any statutory modification thereof for the time being in force.

Notices.

110. 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 in the Colony) to the address, if any, within the Colony 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, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

111. If a member has no registered address in the Colony, and has not supplied to the company an address within the Colony 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 on the day on which the advertisement appears.

112. A notice may be given by the company to the joint holders of a share by giving notice to the joint holder named first in the register in respect of the share.

113. A notice may be given by the company to the persons entitled to a share in consequence of the death, insolvency, 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 assignees of the insolvent or trustee of the bankrupt, or by any like description, at the address, if any, in the Colony 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, insolvency, or bankruptcy had not occurred.

114. Notice of every general meeting shall be given in some manner hereinbefore authorized to (a) every member of the company (including bearers of share warrants) except those members who (having no registered address within the Colony) have not supplied to the company an address within the Colony for the giving of notices to them, and also to (b) every person entitled to a share in consequence of the death, insolvency, or bankruptcy of a member, who, but for his death, insolvency, 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.—Table of Fees to be paid to the Registrar of Companies.

(Section 223.)

I.—By a Company having a Share Capital.

	Rs.	c.
(1) For registration of a company whose nominal share capital does not exceed Rs. 10,000	50	0
(2) For registration of a company whose nominal share capital exceeds Rs. 10,000, the following fees, regulated according to the amount of nominal share capital (that is to say):		
For every Rs. 10,000 of nominal share capital, or part of Rs. 10,000 after the first Rs. 10,000	2	50
(3) For registration of any increase of share capital made after the first registration of the company, for every Rs. 10,000 or part of Rs. 10,000	2	50
(4) For registration of any existing company, except such companies as are by this Ordinance exempted from payment of fees in respect of registration under this Ordinance, the same fee as is charged for registering a new company.		
(5) For registering any document by this Ordinance required or authorized to be registered, other than the memorandum or the abstract required to be filed with the Registrar by a receiver or manager or the statement required to be sent to the Registrar by the liquidator in a winding up	2	50
(6) For making a record of any fact by this Ordinance required or authorized to be recorded by the registrar	2	50

II.—By a Company not having a Share Capital.

(1) For registration of a company whose number of members, as stated in the articles, does not exceed 20	50	0
(2) For registration of a company whose number of members, as stated in the articles, exceeds 20, but does not exceed 100	75	0

	Rs.	c.
(3) For registration of a company whose number of members, as stated in the articles, exceeds 100, but is not stated to be unlimited, the above fee of Rs. 75, with an additional Rs. 2·50 for every 50 members or less number than 50 members after the first 100		
(4) For registration of a company in which the number of members is stated in the articles to be unlimited ..	200	0
(5) For registration of any increase on the number of members made after the registration of the company in respect of every 50 members, or less than 50 members, of that increase ..		2 50
(6) For registration of any existing company, except such companies as are by this Ordinance exempted from payment of fees in respect of registration under this Ordinance, the same fee as is charged for registering a new company.		
(7) For registering any document by this Ordinance required or authorized to be registered, other than the memorandum or the abstract required to be filed with the Registrar by a receiver or manager or the statement required to be sent to the Registrar by the liquidator in a winding up ..		2 50
(8) For making a record of any fact by this Ordinance required or authorized to be recorded by the Registrar	2	50

Form C.—Form of Statement to be published by Banking and Insurance Companies, and Deposit, Provident, or Benefit Societies.

(Section 111.)

* The share capital of the company is —, divided into — shares of — each.
 The number of shares issued is —.
 Calls to the amount of — rupees per share have been made, under which the sum of — rupees has been received.
 The liabilities of the company on the first day of January (or July) were—
 Debts owing to sundry persons by the company :
 On decrees or orders, Rs. —
 On specially, Rs. —
 On notes or bills, Rs. —
 On simple contracts, Rs. —
 On estimated liabilities, Rs. —
 The assets of the company on that day were—
 Government securities (*stating them*).
 Bills of exchange and promissory notes, Rs. —
 Cash at the bankers, Rs. —
 Other securities, Rs. —

SECOND SCHEDULE.

" THE COMPANIES ORDINANCE, No. OF 1924."

Statement in lieu of Prospectus filed by —, Limited,
 pursuant to Section 86 of " The Companies
 Ordinance, No. of 1924."

(Section 86.)

Presented for filing by —.

" THE COMPANIES ORDINANCE, No. OF 1924."

—, Limited.

Statement in lieu of Prospectus.

The nominal share capital of the company, Rs. —.

Divided into { — Shares of Rs. — each.
 — Shares of Rs. — each.
 — Shares of Rs. — each.

Names, descriptions, and addresses }
 of directors or proposed directors } —.

Minimum subscription (if any) fixed }
 by the memorandum or articles }
 of association on which the com- }
 pany may proceed to allotment }

* If the company has no share capital, the portion of the statement relating to capital and share must be omitted.

Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash	}	(1) — shares of Rs. — fully paid.
The consideration for the intended issue of those shares and debentures		(2) — shares upon which Rs. — per share credited as paid.
	}	(3) — debenture — Rs. —
		(4) Consideration —
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 Rs. —
		Cash Rs. —
		Shares Rs. —
		Debentures Rs. —
		Goodwill Rs. —
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company, or	}	Amount paid, Rs. —
		Amount payable, Rs. —
Rate of the commission		Rate, per cent. —
Estimated amount of preliminary expenses		Rs. —
Amount paid or intended to be paid to any promoter	}	Name of promoter : —
Consideration for the payment		Amount, Rs. —
		Consideration : —
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 filing 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	}	_____

Whether the articles contain any provisions precluding holders of shares or debentures receiving and inspecting balance sheets or reports of the auditors or other reports		Nature of the provisions.

(Signatures of the Persons above-named as Directors or proposed Directors, or of their Agents authorized in writing.)

* For definition of vendor, see section 85 (2) of "The Companies Ordinance, No. of 1924."

† See section 85 (3) of "The Companies Ordinance, No. of 1924."

THIRD SCHEDULE.

Form A.—Memorandum of Association of a Company limited by Shares.

(Section 121.)

1st.—The name of the company is "*The Eastern Steam Packet Company, Limited.*"

2nd.—The registered office of the company will be situated in *Ceylon.*

3rd.—The objects for which the company is established are "the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th.—The liability of the members is limited.

5th.—The share capital of the company is *two million rupees* divided into *one thousand* shares of *two thousand rupees* 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:—

Names, Addresses, and Descriptions of Subscribers.	Number of Shares taken by each Subscriber.
1. <i>John Jones, of Colombo, Merchant</i>	200
2. <i>John Smith, of Colombo, Merchant</i> ..	25
3. <i>Thomas Greene, of Colombo, Merchant</i> ..	30
4. <i>John Thompson, of Colombo, Merchant</i> ..	40
5. <i>Caleb White, of Colombo, Merchant</i> ..	15
6. <i>Andrew Brown, of Colombo, Merchant</i> ..	5
7. <i>Cæsar White, of Colombo, Merchant</i> ..	10
Total shares taken ..	325

Dated the — day of —, 192 —.

Witness to the above signatures,

A. B., No. 13, Main street, Colombo, Ceylon.

Form B.—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 Mutual Colombo Marine Association, Limited.*"

2nd.—The registered office of the company will be situate in *Ceylon.*

3rd.—The objects for which the company is established are "the mutual insurance of ships belonging to members of the company, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th.—The liability of the members is limited.

5th.—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, and for the adjustment of the rights of the contributors among themselves, such amount as may be required not exceeding one hundred rupees.

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:—

Names, Addresses, and Descriptions of Subscribers.

1. *John Jones, of Colombo, Merchant.*
2. *John Smith, of Colombo, Merchant.*
3. *Thomas Greene, of Colombo, Merchant.*
4. *John Thompson, of Colombo, Merchant.*
5. *Caleb White, of Colombo, Merchant.*
6. *Andrew Brown, of Colombo, Merchant.*
7. *Cæsar White, of Colombo, Merchant.*

Dated the — day of —, 192 —.

Witness to the above signatures,

A. B., No. 13, Main street, Colombo, Ceylon.

Articles of Association to accompany preceding Memorandum of Association.

Number of Members.

1. The company, for the purpose of registration, is declared to consist of five hundred members.

2. The directors hereinafter mentioned may, whenever the business of the association requires it, register an increase of members.

Definition of Members.

3. Every person shall be deemed to have agreed to become a member of the company who insures any ship or share in a ship in pursuance of the regulations hereinafter contained.

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 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 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 meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

7. The directors may, whenever they think fit, and shall, on a requisition made in writing by any five or more members, convene an extraordinary general meeting.

8. Any requisition made by the members must state the object of the meeting proposed to be called, and must be signed by the requisitionists and deposited at the registered office of the company.

9. On receipt of the requisition the directors shall forthwith proceed to convene a general meeting; if they do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists or any other five members may themselves convene a meeting.

Proceedings at General Meetings.

10. Seven days' notice at the least, specifying the place, the day, and the hour of meeting, and in case of special business the general nature of the business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting; but the non-receipt of such a notice by any member shall not invalidate the proceedings at any general meeting.

11. 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.

12. No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of members is present at the commencement of the business. The quorum shall be ascertained as follows (that is to say), if the members of the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation that no quorum shall in any case exceed thirty.

13. If within one hour from the time appointed for the meeting a quorum of members is not present, the meeting, if convened on the requisition of the members, shall be dissolved; in any other case it shall stand adjourned to the same day in the following week at the same time and place; and if at such adjourned meeting a quorum of members is not present, it shall be adjourned *sine die*.

14. The chairman (if any) of the directors shall preside as chairman at every general meeting of the company.

15. If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman of that meeting.

16. The chairman may, with the consent of 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.

17. At any general meeting, unless a poll is demanded by at least three members, a declaration by the chairman that a resolution has been carried and an entry to that effect in the book of proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution.

18. If a poll is demanded in manner aforesaid, the same 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.

Votes of Members.

19. Every member shall have one vote and no more.

20. If any member is a lunatic or idiot, he may vote by his manager.

21. No member shall be entitled to vote at any meeting unless all moneys due from him to the company have been paid.

22. On a poll votes may be given either personally or by proxy. A proxy shall be appointed in writing under the hand of the appointor, or if such appointor is a corporation, under its common seal.

23. No person shall act as a proxy unless he is a member, or unless he is appointed to act at the meeting as proxy for a corporation. The instrument appointing him shall be deposited at the registered office of the company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

24. Any instrument appointing a proxy shall be in the following form:—

— *Company, Limited.*

—, 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 —, 192 —.

Directors.

25. The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

26. Until directors are appointed the subscribers of the memorandum of association shall for all the purposes of "The Companies Ordinance, No. 1924," be deemed to be directors.

Powers of Directors.

27. The business of the company shall be managed by the directors, who may exercise all such powers of the company as are not by "The Companies Ordinance, No. of 1924," or by any statutory modification thereof for the time being in force, or by these articles, require to be exercised 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.

Election of Directors.

28. The directors shall be elected annually by the company in general meeting.

Business of Company.

[Here insert rules as to mode in which business of insurance is to be conducted.]

Audit.

29. Auditors shall be appointed and their duties regulated in accordance with sections 115 and 116 of "The Companies Ordinance, No. of 1924," or any statutory modification thereof for the time being in force, and for this purpose the said sections shall have effect as if the word "members" were substituted for "shareholders," and as if "first general meeting" were substituted for "statutory meeting."

Notices.

30. 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.

31. 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 unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Names, Addresses, and Descriptions of Subscribers.

1. *John Jones, of Colombo, Merchant.*
2. *John Smith, of Colombo, Merchant.*
3. *Thomas Greene, of Colombo, Merchant.*
4. *John Thompson, of Colombo, Merchant.*
5. *Caleb White, of Colombo, Merchant.*
6. *Andrew Brown, of Colombo, Merchant.*
7. *Cæsar White, of Colombo, Merchant.*

Dated the — day of —, 192 —.

Witness to the above signatures,

A. B., No. 13, Main street, Colombo, Ceylon.

Form C.—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 registered office of the company will be situate in *Ceylon.*

3rd.—The objects for which the company is established are "the facilitating travelling in the highlands of Ceylon, by providing hotels and conveyances by 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.

4th.—The liability of the members is limited.

5th.—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 amounts as may be required, not exceeding two hundred rupees.

6th.—The share capital of the company shall consist of *five hundred thousand rupees*, divided into *five thousand* shares of *one hundred rupees* 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:—

Names, Addresses, and Description of Subscribers.	Number of Shares taken by each Subscriber.
1. <i>John Jones, of Colombo, Merchant</i> ..	200
2. <i>John Smith, of Colombo, Merchant</i> ..	25
3. <i>Thomas Greene, of Colombo, Merchant</i> ..	30
4. <i>John Thompson, of Colombo, Merchant</i> ..	40
5. <i>Caleb White, of Colombo, Merchant</i> ..	15
6. <i>Andrew Brown, of Colombo, Merchant</i> ..	5
7. <i>Cæsar White, of Colombo, Merchant</i> ..	10
Total shares taken ..	325

Dated the — day of —, 192 —.

Witness to the above signatures,

A. B., No. 13, Main street, Colombo, Ceylon.

Articles of Association to accompany preceding Memorandum
of Association.

1. The directors may, with the sanction of the company in general meeting, reduce the amount of shares in the company.
2. The directors may, with the sanction of the company in general meeting, cancel any shares belonging to the company.
3. All the articles of Table A of "The Companies Ordinance, No. of 1924," shall be deemed to be incorporated with these articles and to apply to the company.

Names, Addresses, and Description of Subscribers.

1. *John Jones, of Colombo, Merchant.*
2. *John Smith, of Colombo, Merchant.*
3. *Thomas Greene, of Colombo, Merchant.*
4. *John Thompson, of Colombo, Merchant.*
5. *Caleb White, of Colombo, Merchant.*
6. *Andrew Brown, of Colombo, Merchant.*
7. *Cæsar White, of Colombo, Merchant.*

Dated the — day of —, 192 —.

Witness to the above signatures,

A. B., No. 13, Main street, Colombo, Ceylon.

Form D.—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 registered office of the company will be situate in *Ceylon.*

3rd.—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 *Colombo*, is the sole patentee."

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:—

Names, Addresses, and Description of Subscribers.	Number of Shares taken by each Subscriber.
1. <i>John Jones, of Colombo, Merchant</i> ..	3
2. <i>John Smith, of Colombo, Merchant</i> ..	2
3. <i>Thomas Greene, of Colombo, Merchant</i> ..	1
4. <i>John Thompson, of Colombo, Merchant</i> ..	2
5. <i>Caleb White, of Colombo, Merchant</i> ..	2
6. <i>Andrew Brown, of Colombo, Merchant</i> ..	1
7. <i>Abel Brown, of Colombo, Merchant</i> ..	1
Total shares taken ..	12

Dated the — day of —, 192 —.

Witness to the above signatures,

A. B., No. 20, Main street, Colombo, Ceylon.

Articles of Association to accompany the preceding
Memorandum of Association.

1. The share capital of the company is *two thousand rupees* divided into *twenty* shares of *one hundred rupees* each.

2. All the articles of Table A of "The Companies Ordinance, No. — of 1924," shall be deemed to be incorporated with these articles, and to apply to the company.

Names, Addresses, and Description of Subscribers.

1. *John Jones, of Colombo, Merchant.*
2. *John Smith, of Colombo, Merchant.*
3. *Thomas Greene, of Colombo, Merchant.*
4. *John Thompson, of Colombo, Merchant.*
5. *Caleb White, of Colombo, Merchant.*
6. *Andrew Brown, of Colombo, Merchant.*
7. *Abel Brown, of Colombo, Merchant.*

Dated the — day of —, 192 —.

Witness to the above signatures,

A. B., No. 20, Main street, Colombo, Ceylon.

Form E as required by Part II. of the Ordinance.

Summary of Share Capital and Shares of the — Company,
Limited, made up to the — day of —, 192 — (being
the fourteenth day after the date of the First Ordinary
General Meeting in 192 —).

(Section 29.)

Nominal share capital Rs. —	} — shares of Rs. — each.
divided into — *	
Total number of shares taken up * to the — day of —, 192 — (which number must agree with the total shown in the list as held by existing members)	} —
Number of shares issued subject to payment wholly in cash	

* When there are shares of different kinds or amounts (*e.g.*, preference and ordinary, or Rs. 10 or Rs. 5), state the numbers and nominal values separately.

Number of shares issued as fully paid up otherwise than in cash	_____
Number of shares issued as partly paid up to the extent of _____ per share otherwise than in cash	_____
* There has been called up on each of _____ shares, Rs.	_____
* There has been called up on each of _____ shares, Rs.	_____
* There has been called up on each of _____ shares, Rs.	_____
† Total amount of calls received, including payments on application and allotment	Rs. _____
Total amount (if any) agreed to be considered as paid on _____ shares which have been issued as fully paid up otherwise than in cash	Rs. _____
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	Rs. _____
Total amount of calls unpaid	Rs. _____
Total amount (if any) of sums paid by way of commission in respect of shares or debentures or allowed by way of discount since date of last summary	Rs. _____
Total amount (if any) paid on‡ _____ shares forfeited	Rs. _____
Total amount of shares and stock for which share warrants are outstanding	Rs. _____
Total amount of share warrants issued and surrendered respectively since date of last summary	Rs. _____
Number of shares or amount of stock comprised in each share warrant	_____
Total amount of debt due from the company in respect of all mortgages and charges which are required to be registered with the Registrar of Companies, or which would require registration	Rs. _____

Statement in the Form of a Balance Sheet made up to the _____ day of _____, 192 _____, containing the Particulars of the Capital, Liabilities, and Assets of the Company.

The return must be signed at the end by a Director or by the manager or secretary of the company.
Presented for filing by _____.

List of Persons holding Shares in the _____ Company, Limited. on the _____ day of _____, 192 _____, and of Persons who have held Shares therein at any time since the Date of the last Return, showing their Names and Addresses and an Account of the Shares so held.

Folio in Register Ledger containing Particulars.	Names, Addresses, and Occupations.				Account of Shares.				Remarks.	
	Surname	Christian Name.	Address.	Occupation.	a Number of Shares held by existing Members at Date of Return.	b Particulars of Shares transferred since the Date of the last Return by Persons who are still Members.		b Particulars of Shares transferred since the Date of the last Return by Persons who have ceased to be Members.		
						Number.c	Date of Registration of Transfer.	Number.c		Date of Registration of Transfer.

a 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.

b 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.

c When the shares are of different classes, these columns may be subdivided, so that the number of each class held or transferred may be shown 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.

‡ State the aggregate number of shares forfeited (if any).

Names and Addresses of the Persons who are the Directors, &c.,
of the —, Limited, on the — day of —, 192 —.

(Section 29.)

Names.	Former Names (if any).	Addresses.	Occupations.	Nationalities.	Nationality of Origin if other than present.	Persons by whose orders or instructions the Directors of the Company are accustomed to act.

Note.—Banking companies must add a list of all their places of business.

(Signature) —.

(State whether Director, Manager or Secretary) —.

FOURTH SCHEDULE.

Form of Mortgage.

(Section 81.)

The — Company, Limited (in consideration of the sum of Rs. — paid to such company by — of —), mortgages unto him, his heirs, executors, administrators, and assigns the following —.

Given under the seal of the said company this — day of —, 192 —.

FIFTH SCHEDULE.

Provisions referred to in Section 244 of the Ordinance.

Provisions relating to—

- The conclusiveness of certificates of incorporation ; section 20.
- Restrictions on appointments or advertisement of directors ; section 74.
- Restrictions on commencement of business ; section 91.
- Returns as to allotments ; section 92.
- Statutory meetings ; section 67.
- The particulars as to directors and mortgage debt and the statement in the form of a balance sheet in the annual summary ; section 29.
- The appointment and remuneration, and powers and duties, of auditors ; sections 115 and 116.
- Obligations of companies where no prospectus is issued ; section 86.
- Registration of mortgages and charges in Ceylon ; section 97.
- Filing of accounts of receiver and manager ; section 99.
- Notice by liquidator in voluntary winding up of his appointment ; section 184.
- Rights of creditors in a voluntary winding up ; section 185.
- Requirements as to companies established outside Ceylon ; section 237.

SIXTH SCHEDULE.

Enactments repealed.

Number and Year.	Short Title.	Extent of Repeal.
4 of 1861.	"The Joint Stock Companies Ordinance, 1861," and all Ordinances amending the same	.. The whole Ordinance
4 of 1888.	—	.. do.
6 of 1888.	"The Joint Stock Companies Ordinance, 1888"	.. do.
3 of 1893.	"The Joint Stock Companies Ordinance, 1893"	.. do.
2 of 1897.	"The Joint Stock Banking Ordinance, 1897"	.. do.

By His Excellency's command,

Colonial Secretary's Office,
Colombo, October 16, 1924.CECIL CLEMENTI,
Colonial Secretary.

Statement of Objects and Reasons.

It might elucidate the position if attention were called to the course of legislation in England with respect to the incorporation and regulation of trading companies and other associations.

"The Joint Stock Companies Act, 1856," was a general Act, consolidating and amending the existing English law relating to Joint Stock Companies. This Act having been amended in important particulars by a series of other Acts was itself repealed, and the consolidating and amending Act of 1862—"The Companies Act, 1862"—took its place.

"The Companies Act, 1862," underwent an experience similar to its predecessor, and was itself amended by more than twenty Acts of the Imperial Parliament.

To meet this complicated state of affairs, the important measure known as "The Companies (Consolidation) Act, 1908," was passed. This Act consolidates, with amendments, the law relating to trading companies and other associations for the United Kingdom.

The company law of Ceylon is contained in "The Joint Stock Companies Ordinance, 1861," and a considerable number of enactments which have been passed by the Legislature between that date and the present time. "The Joint Stock Companies Ordinance, 1861," is practically a copy of "The Joint Stock Companies Act, 1856," but no notice was taken locally of the great English consolidating measures of 1862 and 1908; all that has been done is to enact portions of the enactments relating to companies passed by the English Parliament.

The result is that the local company law is not in a satisfactory shape.

This Bill is intended to bring this most important branch of the law up to date, and is largely a copy of "The Companies (Consolidation) Act, 1908" (hereafter called the Imperial Act). The advantages of following the model of the existing English law are obvious. The text books published and the cases decided in England by experts in company law are made available in Ceylon, and the administration of the law is correspondingly facilitated. Since the passing of "The Companies (Consolidation) Act, 1908," certain amending measures have been passed by the English Parliament. These amendments were mainly due to considerations arising out of the recent war and are given effect to in this Bill, and it is proposed to call attention to them, as well as some other matters of interest, individually when dealing with these portions of the Bill where they appear.

Part I. of the Bill closely follows Part I. of the Imperial Act, with the following modifications:—

- (a) Section 10 of the Bill reproduces section 8 of the Imperial Act, with the amendments made by section 2 of Ordinance No. 7 of 1918.
- (b) Section 16 of the Bill embodies the provisions of section 1 of 7 & 8 Geo. V., c. 18.
- (c) Section 14 of Ordinance No. 4 of 1861 requires the certificate of the Attorney-General before a company can be registered. There is no similar requirement in the Imperial Act, and it is suggested that the English precedent should be adopted in Ceylon as in other Colonies.

Parts II. and III. of the Bill practically re-enact Parts II. and III. of the Imperial Act, with the modifications that—

- (a) Sections 29 (2) (b) and 77 of the Bill include the provisions as to disclosure of the nationalities of directors required by section 1 of 7 & 8 Geo. V., c. 28. But section 29 (1) and (2) does not include all the requirements of section 26 of the Imperial Act. It has been represented that requirements similar to those contained in section 20 of Ordinance No. 4 of 1861 are sufficient, and this representation has been given effect to.
- (b) Section 68 (1) differs from the Imperial Act in requiring not less than one-seventh of the members holding not less than one-seventh of the issued share capital to make requisition for a meeting. The Chamber of Commerce made strong representations in favour of this amendment in view of local conditions.

- (c) Sections 81 and 82 of the Bill, which reproduce sections 56 and 57 of No. 4 of 1861, do not appear in the Imperial Act because they are unnecessary. In Ceylon, however, they are still required.
- (d) The power of the Governor in Executive Council to order the inspection of the affairs of a company having a share capital under section 112 (1) is the same whether the company is a bank or not. It is thought well to make this change from the Imperial Act in view of local conditions.
- (e) Section 124 of the Bill enacts section 121 of the Imperial Act, as amended by 3 & 4 Geo. V., c. 25. It allows of two or more persons forming themselves into a private company which is a form of company not known so far in Ceylon.

Part IV. of the Bill closely follows Part IV. of the Imperial Act, with the following modifications :—

- (a) Section 125 of the Bill enacts section 122 of the Imperial Act, including the amendment in the law made by section 2 of 7 & 8 Geo. V., c. 18. This important amendment prevents companies whose articles of association restrict the interest aliens may hold in its capital from being wound up with a view to getting rid of such restrictions.
- (b) Section 134 of the Bill confers on the District Court having jurisdiction where the registered office of a company is situated the winding up jurisdiction. It follows section 68 of No. 4 of 1861.

Part V. of the Bill deals with the registration office for companies and fees. The Registrar-General is continued as Registrar of Companies.

The fees in Part I., Table B, of the First Schedule are based on those contained in Table A of the Schedule to No. 4 of 1861.

Part VI. of the Bill follows Part VI. of the Imperial Act, and applies to companies formed and registered under existing Companies Ordinances.

Part VII. of the Bill re-enacts Part VIII. of the Imperial Act, and deals with the winding up of unregistered companies.

Part VIII. of the Bill reproduces, with certain amendments, Part IX. of the Imperial Act.

Section 237 of the Bill, which is modelled on section 274 of the Act, has, however, been amended by inserting the provisions as to the nationality of directors of Ordinance No. 5 of 1918, section 5, and of section 2 of No. 29 of 1919.

Part IX. of the Bill reproduces Part X. of the Imperial Act. The Schedules to the Bill are based on those to the Imperial Act.

Attorney-General's Chambers,
Colombo, October 9, 1924

L. H. ELPHINSTONE,
Attorney-General.