



THE CEYLON GOVERNMENT GAZETTE

EXTRAORDINARY

No. 9,607 — MONDAY, SEPTEMBER 30, 1946.

Published by Authority.

PART II.—LEGAL.

(Separate paging is given to each Part in order that it may be filed separately.)

DRAFT ORDINANCES.

MINUTE.

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

An Ordinance to amend the Companies Ordinance,
No. 51 of 1938.

1941
Supplement
(Vol. II.,
p. 221.)

BE it enacted by the Governor of Ceylon, with the advice and consent of the State Council thereof, as follows :—

1. This Ordinance may be cited as the Companies (Amendment) Ordinance, No. of 1946.

Short title.

2. Section 106 (3) of the Companies Ordinance, No. 51 of 1938, (hereinafter referred to as "the principal Ordinance"), is hereby amended as follows :—

Amendment
of section 106
of Ordinance
No. 51 of 1938.

(1) in paragraph (o) thereof, by the substitution, for the words "under this Ordinance.", of the words "under this Ordinance ;" ; and

(2) by the insertion, immediately after paragraph (o), of the following new paragraph :—

"(p) the name and address of the auditor, or the names and addresses of the auditors, of the company at the date of the return."

3. Section 132 of the principal Ordinance is hereby amended by the insertion immediately after sub-section (3), of the following new sub-section :—

Amendment of
section 132
of the principal
Ordinance.

"(4) If any person other than a registered auditor makes the report referred to in the preceding provisions of this section, or exercises any power conferred on an auditor by those provisions, he shall be guilty of an offence, and shall be liable to a fine not exceeding one thousand rupees or to imprisonment of either description for a term not exceeding one year, or to both such fine and imprisonment."

4. Section 133 of the principal Ordinance is hereby amended as follows :—

Amendment of
section 133
of the principal
Ordinance.

(1) in sub-sections (3) and (4), by the substitution, for the words "officers and agents of the company" wherever those words occur in those sub-sections, of the words "officers and agents of the company, past and present," ; and

(2) in sub-section (5)—

(a) by the substitution, for the words "any officer or agent of the company", of the words "any officer or agent of the company, past or present," ; and

(b) by the addition at the end of that sub-section, of the following :—

“ An appeal from any order made by the Court under the preceding provisions of this sub-section shall lie to the Supreme Court, and such appeal shall be regarded as an appeal from an order made by a District Court in the exercise of its ordinary criminal jurisdiction.”.

Amendment of section 135 of the principal Ordinance.

5. Section 135 of the principal Ordinance is hereby amended in sub-section (3) by the substitution, for the words “ officer or agent of the company ” of the words “ officer or agent of the company, past or present,”.

Amendment of section 321 of the principal Ordinance.

6. Section 321 (1) of the principal Ordinance is hereby amended as follows :—

- (1) in paragraph (a) thereof, by the substitution, for the words “ a copy of such balance sheet ” of the words “ a certified copy of such balance sheet ”; and
- (2) in paragraph (b) thereof, by the substitution, for the words “ a copy of that balance sheet ” of the words “ a certified copy of that balance sheet ”.

Insertion of new sections 342B and 342C.

7. Part XIV of the principal Ordinance is hereby amended by the insertion immediately after the heading “ Miscellaneous ”, of the following new sub-heading and new sections which sections shall have effect as sections 342B and 342C of the principal Ordinance :—

Appointments of Officers, &c.

Appointment of officers, &c.

342B. (1) The Governor may appoint—

- (a) any person, by name or by office, to be or to act as the registrar of companies;
- (b) any person, by name or by office, to be or to act as an assistant registrar of companies; and
- (c) such other officers and servants as may from time to time be required for the purposes of this Ordinance.

(2) Any person appointed under sub-section (1) to be or to act as an assistant registrar of companies, may subject to the general directions of the registrar, exercise all the powers, perform all the duties and discharge all the functions of the registrar under the Ordinance.

Copies of damaged or illegible document.

342C. If any document filed with, or in the custody of, the registrar of companies is damaged or is in danger of becoming illegible, the registrar may, if he thinks fit, direct a copy thereof to be made, verified, and certified in any such manner as he may determine, and thereupon such copy shall be substituted for, and shall for all purposes of this Ordinance be deemed to be, the document so damaged or in danger of becoming illegible.

Part appointments of registrars deemed to have been duly made.

8. Any person appointed to be or to act as registrar of companies before the commencement of this Ordinance shall be deemed to have been appointed under the amended provisions set out in section 7 of this Ordinance.

Objects and Reasons.

The duties imposed on auditors under the Companies Ordinance, including the duty of preparing reports on accounts required under section 132 of the Ordinance, are now being performed frequently by auditors without suitable qualifications, and accordingly are not being carried out properly. There is no effective provision in the Ordinance to-day for securing the performance of these duties by auditors with recognised qualifications. Clause 3 of this Bill supplies this omission. According to that clause, if an auditor without recognised qualifications performs certain duties imposed on auditors by the Ordinance, he is guilty of an offence and liable to punishment.

2. Under sections 133 and 135 of the Companies Ordinance, it is possible for an inspector appointed to investigate the affairs of a company to examine on oath the present officers and agents of the company and to call upon them to produce books and documents in their custody or power. These sections do not, however, enable such an inspector to examine past officers and agents or to demand the production of

documents in their power, although such officers and agents may be in possession of useful information necessary for the purposes of the inspector's investigations. The object of clauses 4 (1), 4 (2) (a) and 5 of this Bill is to amend sections 133 and 135 of the Ordinance, so as to enable such an inspector even to examine past officers and agents of a company and to demand from them books and papers in their custody. A provision similar to this is contained in Section 140 of the Indian Companies Act.

3. Under section 133 (5) of the Ordinance action can be taken against an officer or agent of a company, who refuses to provide information relating to the business of the company to an inspector appointed under the Ordinance to investigate its affairs, by the question of such refusal being canvassed by the District Court, the Court having the power to decide whether or not such person is to be punished in like manner as if the offender had been guilty of a contempt of Court. It is not expressly stated in this section whether an appeal will lie to the Supreme Court from a decision made by the District Court under this provision. As the decision involved is an important one, express provision is made in this Bill for such an appeal [Clause 4 (2) (b)].

4. There is no general provision in the Companies Ordinance relating to the appointments of officers and servants necessary for the purpose of enforcing its provisions. There is also to-day no provision in the Ordinance for any officer to exercise the powers, perform the duties or discharge the functions of the registrar of companies, in case he is unable personally to exercise those powers, perform those duties or discharge those functions. The object of clause 7 of this Bill is to supply those omissions by providing for the appointment of such persons by the Governor, and by giving power to an assistant registrar of companies to act for the registrar under the latter's general directions.

5. Many documents filed with the registrar for the purposes of the Ordinance are damaged or are in danger of becoming illegible. As it is essential that the contents of such documents should be easily ascertainable, power is given to the registrar, by one of the provisions of clause 7, to take copies of such documents.

G. C. S. COREA,

Minister for Labour, Industry and Commerce.

Colombo, 24th September, 1946.